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SUPREME COURT OF THE UNITED STATES.

No. 26.

DANIEL BOARDMAN ET AL., PLAINTIFFS IN ERROR,

VERSUS

GEORGE F. McCALL ET AL.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE WESTERN DISTRICT OF VIRGINIA.

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UNITED STATES OF AMERICA, WESTERN DISTRICT OF VIRGINIA, *to wit:*

LESSEE OF REED AND FORD AND OTHERS, *against* DANIEL BOARDMAN AND OTHERS. } *In ejectment, for* 8000 *acres of land, on French Creek, in the County of Lewis.*

Pleas held at the court-house in the town of Clarksburg, Harrison County, Virginia, before the Honorable Alexander Caldwell, Judge of the district court of the United States of America for the western district of Virginia, on Saturday, the eleventh day of April, in the year of our Lord one thousand eight hundred and twenty-nine, and in the fifty-third year of the independence of the United States of America.

Be it remembered, that heretofore, to wit, at a district court of the United States of America, held at Clarksburg, for the western district of Virginia, before the Honorable Philip C. Pendleton, then Judge of the said court, on Monday, the sixth day of June, in the year of our Lord one thousand eight hundred and twenty-five, and in the forty-ninth year of the independence of the United States of America, came Peregrine Pickle, a citizen of the State of Pennsylvania, by Edwin S. Duncan, Esquire, his attorney, and brought into the said court his certain declaration of ejectment against Roderick Random, a citizen of the western district of Virginia, which declaration, together with a notice and an affidavit thereunder written, are in the words and figures following, to wit:

VIRGINIA.—*In the United States Court for the Western District of Virginia.*

Peregrine Pickle, a citizen and inhabitant of the State of Pennsylvania, complains of Roderick Random, a citizen and inhabitant of the State of Virginia, and of the judicial district aforesaid, in custody, &c., of a plea of trespass, for this, that, on the first day of January, A. D. 1820, at the judicial district aforesaid, George C. McCall and William C. McCall demised to the said Peregrine Pickle a certain tract of land, containing 8000 acres, with the appurtenances, situate in the district aforesaid, in the county of Lewis, on French creek; to have and to hold the same, with the appurtenances, to the said Peregrine Pickle for the term of ten years thence next ensuing.

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And also, whereas Sarah Ford, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Eleanor Ford, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Standish Ford, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Margaret Ford, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas John Ford, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Ann Ford, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Mary Ford, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Sarah Ford, Eleanor Ford, Standish Ford, Margaret Ford, John Ford, Ann Ford, and Mary Ford, citizens and inhabitants of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Archibald McCall, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Archibald McCall, junior, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas George McCall, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas George Taylor, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Archibald McCall, Mary Cadwallader, Ann Reed, John G. McCall, Peter McCall, Margaret A. McCall, Samuel McCall, Harriet McCall, Richard McCall, William McCall, Catharine McCall, Robert McCall, Henry McCall, George C. McCall, and William C. McCall, citizens and inhabitants of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Mary Cadwallader, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Ann Reed, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas John G. McCall, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Peter McCall, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Margaret A. McCall, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Samuel McCall, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Harriet McCall, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurte-

nances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Catharine McCall, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Standish Ford and John Reed, citizens and inhabitants of the State of Pennsylvania, deriving and claiming title by the name and style of Reed and Ford, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Standish Ford, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Standish Ford, surviving joint tenant with John Reed, claiming and deriving title by the name of Reed and Ford, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas John Reed, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas John Reed, surviving joint tenant with Standish Ford, claiming and deriving title by the name of Reed and Ford, citizens and inhabitants of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas William Hansel, and Eleanor his wife, citizens and inhabitants of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Benjamin Smith, and Margaret his wife, citizens and inhabitants of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas Robert Ralston, citizens and inhabitants of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas William Tillon, a citizen and inhabitant of the State of Pennsylvania, on the same day and year aforesaid, at said judicial dis-

trict, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

And also, whereas William Hansel, and Eleanor his wife, Benjamin Smith, and Margaret his wife, Robert Ralston and William Tillon, citizens and inhabitants of the State of Pennsylvania, on the same day and year aforesaid, at said judicial district, demised to the said plaintiff the aforesaid tract of land, with the appurtenances; to have and to hold the same from the day and year aforesaid, for the term of ten years thence next ensuing.

By virtue of which said several demises the said Peregrine Pickle entered into the said several tenements, with the appurtenances, and was thereof possessed; and being so in possession thereof, the said Roderick Random, on the first day of January, A. D. 1821, at the district aforesaid, with force and arms, into the said tenement, with the appurtenances, (which had been demised as aforesaid to the said Peregrine, in form aforesaid, for the terms aforesaid, and which had not yet expired,) entered, and him, the said Peregrine, from the said tenements and appurtenances then and there ejected, to the great damage of the said Peregrine, and against the peace, &c.; wherefore the said Peregrine saith he has sustained $10,000 damages, and therefore brings suit. DUNCAN, *Att.*

John Doe, &c.

Notice.

Mr. Oliver House, William Hire, Joseph McKinney, Samuel Gould, Cyrus Rice, Rice Vincent, Saul Reger, William C. Davis, Isaac Bozarth, Lawrence Hopkins, Daniel Haines, William Philips, Ezra Ward, James Clark, Abram Wells, James Bartlett, Samuel Tolbert, Isaac Parker, Jacob Simon, Robert Clark, Aaron Gould, jr., Ezra Brooks, Roswell Knowlton, Warren Knowlton, Phineas Chidester, Daniel Stringer, Aaron Gould, Robert Young, John Vincent, William Clark, David Phillips, Elijah Phillips, James Barnes, Bizar Phillips, Widow Vandeventer, Jacob Vandeventer, James Wells, Daniel Boardman, citizens and inhabitants of the State, and of the western judicial district of Virginia: I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear on the first day of the United States' court, at the next term to be held for the western district of Virginia, at Clarksburg, and then and there cause yourself to be made defendant in my stead; otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession.

Yours, &c.,

Feb. 27, 1825. RODERICK RANDOM.

Affidavit.

HARRISON COUNTY, to wit:

John W. Patton, deputy marshal, personally appeared before me, the subscriber, a justice of the peace for said county, and made oath, that, on the 3d day of May, A. D. 1825, he delivered a copy and read the within declaration in ejectment, and the notice thereto annexed, to Daniel Stringer, Robert Young and Samuel Gould; on the 4th day of the same month he delivered a copy and read the same to Roswell Knowlton, Warren Knowl-

ton, Phineas Chidester, Robert Clark, Ezra Brooks, James Clark, Abram Wells, Isaac Parker, Daniel Haines, Rice Vincent, Saul Reger, William I. Davis, Isaac Bozarth, William Hire, Joseph McKinney, William Clark, Elijah Phillips, Bizar Phillips, Jacob Vandeventer; and on the same day delivered a copy and read the same to the wife of Jacob Simons, another copy the wife of James Bartlett, another copy to the wife of Samuel Tolbert, another copy to the wife of Lawrence Hopkins, another copy to the wife of David Phillips, another copy to the wife of James Wells, another copy to the wife of John Vincent, and another copy to the son of Widow Vandeventer, at their respective residences—the said Jacob Simons, James Bartlett, Samuel Tolbert, Lawrence Hopkins, James Wells, John Vincent, and Widow Vandeventer being absent from home; and on the 5th day of the same month delivered a copy and read the same to Aaron Gould, jr., William Phillips, Aaron Gould, sen., James Barnes, Ezra Ward, Henry Winemiller, and delivered a copy and read the same to the wife of Cyrus Rice, another copy to the wife of Oliver House.

Sworn to this 10th day of May, A. D. 1825.

D. MORRIS, *J. P.*

Whereupon Samuel Gould, Robert Young, Daniel Boardman, Roswell Knowlton, Warren Knowlton, Phineas Chidester, Robert Clark, Ezra Brooks, James Clark, Abram Wells, Isaac Parker, Daniel Haines, Rice Vincent, Saul Reger, William I. Davis, Isaac Bozarth, William Hire, Joseph McKinney, William Clark, Elijah Phillips, Bizar Phillips, Jacob Vandeventer, Jacob Simons, James Bartlett, Samuel Tolbert, Lawrence Hopkins, David Phillips, James Wells, Widow Vandeventer, John Vincent, Aaron Gould, jr., William Phillips, Aaron Gould, sen., James Barnes, Ezra Ward, Henry Winemiller, Cyrus Rice, and Oliver House, were on their motion admitted defendants in this suit, in the room of the said casual ejector, Roderick Random; and thereupon, by James Pindall, their attorney, they came and defended the force and injury when and where they might, pleaded the general issue, confessed the lease, entry, and ouster in the declaration supposed, and agreed to insist on the title only at the trial.

And by consent of parties it was ordered that any authorized surveyor of this judicial district should go upon the lands in controversy, and survey and lay out the same as either party should require, and return five fair plats and reports to court. And by consent of parties, it was also ordered, that commissions should issue to take the depositions of their witnesses to be read in this cause. And this cause was then continued until the next term thereafter of said court.

And afterwards, to wit, at a district court of the United States of America, held for the western district of Virginia at Clarksburg, before the Honorable Alexander Caldwell, Judge of the said court, on Monday, the seventh day of November, in the year of our Lord last aforesaid, and in the fiftieth year of the independence of the United States of America, for reasons appearing to the court, this cause was continued until the then next following term of the said court.

And afterwards, to wit, at a district court of the United States of America for the western district of Virginia, held at Clarksburg, before the Honorable Alexander Caldwell, Judge of said court, on Monday, the fifth day of June, in the year of our Lord one thousand eight hundred and twenty-six, and in the year of the independence of the United States of

America last aforesaid, on motion of the defendants, and for reasons appearing to the court, it was ordered that this cause should be continued until the then next term of the said court.

And afterwards, to wit, at a district court of the United States of America for the western district of Virginia, held at Clarksburg, before the Honorable Alexander Caldwell, Judge of the said court, on Wednesday, the sixth day of September, in the year of our Lord last aforesaid, and in the fifty-first year of the independence of the United States of America, came the parties, by their counsel, and by their consent this suit was ordered to be discontinued as to the defendants Rachael Vandeventer, James Barnes, and Solomon Reger, and this cause was then continued until the next term thereafter of the said court.

And afterwards, to wit, at a district court of the United States of America for the western district of Virginia, held at Clarksburg, before the Honorable Alexander Caldwell, Judge of the said court, on Monday, the second day of April, in the year of our Lord one thousand eight hundred and twenty-seven, and in the year of the independence of the United States of America last aforesaid, came the parties, by their attorneys, and by their consent a motion for a continuance came on to be heard; whereupon, on motion of the defendants, and for reasons appearing to the court, it was considered by the court that this cause should be continued at the costs of the defendants, until the next term thereafter of the said court.

And afterwards, to wit, at a district court of the United States for the western district of Virginia, held at Clarksburg, before the Honorable Alexander Caldwell, Judge of the said court, on Wednesday, the fifth day of September, in the year of our Lord last aforesaid, and in the fifty-second year of the independence of the United States of America, came the parties, by their attornies, and on motion of the plaintiff, this suit was discontinued as to J. Parker, Jacob Samuels, Samuel Tolbert and Jacob Vandeventer, and this cause was then continued until the then next term of the said court.

And afterwards, to wit, at a district court of the United States of America, for the western district of Virginia, held at Clarksburg, before the Honorable Alexander Caldwell, Judge of the said court, on Wednesday the ninth day of April, in the year of our Lord one thousand eight hundred and twenty-eight, and in the year of the independence of the United States of America last aforesaid, came the parties, by their attorneys; and on motion of the defendants, this cause was then continued until an adjourned term of the said court, thereafter to be held at Clarksburg, on the second Monday in the month of May then next following. It was also agreed by the parties, that no objections should be made to the depositions filed in this cause, for want of form. And on the further motion of the defendants, it was ordered that a subpœna duces tecum should issue, directed to the surveyor of Monongalia county, requiring him to bring with him the original book of surveys, containing the surveys of the plaintiff, entered of record, between the twentieth day of July, A. D. 1784, and the twentieth day of July, A. D. 1786, and this cause was then continued as last above mentioned.

And afterwards, to wit, at a district court of the United States of America for the western district of Virginia, begun and held at Clarksburg on Monday the twelfth day of May, in the year of our Lord, and of the independence of the United States of America, last aforesaid, came the parties, by their attorneys; and on motion of the defendants, a subpœna duces tecum

was directed to the surveyors of Monongalia and Harrison counties, (requiring them to bring with them the books of surveys in their respective offices, containing the surveys entered therein of record between the twentieth day of July, 1784, and the twentieth day of July, 1786,) returnable to the then next term of the said court, until which term, on motion of the plaintiff, and for reasons appearing to the court, this cause was continued at the costs of the plaintiff.

And afterwards, to wit, at a district court of the United States of America for the western district of Virginia, at the fall term of the said court, held at Clarksburg in the month of September, in the year of our Lord last aforesaid, this cause was continued until the then next term of the said court.

And afterwards, to wit, at a district court of the United States of America for the western district of Virginia, held at Clarksburg, before the Honorable Alexander Caldwell, Judge of the said court, on Tuesday, the seventh day of April, in the year of our Lord one thousand eight hundred and twenty-nine, and in the fifty-third year of the independence of the United States of America, came Jacob Simons, in his proper person, and disclaimed to make any title or claim to the land in the declaration of the plaintiff claimed; therefore, on motion of the plaintiff, and with the consent of the said Simons, this cause was discontinued as to him.

And afterwards, to wit, at the same term of the said court last mentioned, and before the same judge, at Clarksburg, on Thursday, the ninth day of the same month, came the parties, by their attorneys; and a jury being called to try the issue joined between the parties, came, to wit, Alexander Withers, John Reynolds, Daniel Kincheloe, William Ivers, Joseph McCoy, James Burson, Eli Butcher, Ephraim Barnes, Caleb Jones, Jonathan Prentis, John M. Hart, and Nathan Ashby, all good and lawful men of said judicial district, who were duly elected, tried, and sworn the truth to speak upon the issue joined; and having heard the testimony, they were adjourned until the day then next following.

At which time, to wit, at the same term of the said court, on Friday, the tenth day of the same month last aforesaid, the jury appeared in court, according to their adjournment of the preceding day; but the arguments of counsel not having been concluded on that day, the said jury were again adjourned until the then next day.

At which day, to wit, on the day, in the year, at the place, and before the judge, first herein aforesaid mentioned, came the parties, by their attorneys, and the jury who were sworn on a preceding day, to try the issue joined between the parties, met agreeably to their adjournment, and having heard the arguments of counsel concluded, retired to their chamber, and after some time returned into court, and upon their oaths say, "We find for the plaintiff the lands in the declaration mentioned, and described in the plat and report of Thomas Haymond (made in pursuance of an order of this court in this cause, marked with the letter A upon its back) by the red lines lettered J, K, P, O, and one cent damages." Therefore it is considered by the court that the plaintiff recover against the defendants his term yet to come of and in the lands in the said verdict described, together with his damages by the jury in manner and form aforesaid assessed, and his costs by him about his suit in this behalf expended. And the defendants may be taken, &c.

Whereupon the plaintiff prays a writ of habere facias possessionem, to the marshal of this court to be directed, to cause him to have his possession

of his said term; and to him it is granted. It is agreed by the parties, that the lands adjudicated exceed in value the sum of two thousand dollars, exclusive of costs.

Be it remembered, that, on the trial of this cause, the defendants, with the leave of the court, tendered a bill of exceptions to opinions of the court given in this cause, which was received, signed, and sealed by the court, and was filed, and ordered to be made part of the record in this cause; which bill of exceptions is in the words and figures following, to wit:

Bill of Exceptions.

Upon the trial of this cause, a draught and report returned by a surveyor, in obedience to an order of survey made in this cause, was given in evidence to the jury, which draft and report is the words and figures following, to wit:*

THE LESSEE OF REED AND FORD, plaintiff, *against* SAMUEL GOULD AND OTHERS, defendants, } *Upon an ejectment in the U. S. District Court for the western dist. of Virginia.*

In pursuance of an order made in the above cause, I surveyed the land in controversy. The lines shaded red in the above diagram represent what the plaintiff claims to be his survey; the lines shaded green represent the defendant Daniel Boardman's claim. I was not required to lay down the claims of the other defendants. I run the lines AC, CD, DE, AF, FH, GB, FI, HK, LM, MN, IO, OP, PQ, PK, OR, RS, RT, TU, UW, and from W to the right hand fork of the west fork at X, and found a white oak corner at A, two black oaks at B, a white oak and beech at figure 2 on the line BC, a white oak at 3, a white oak and black oak at 4, a sugar and walnut at 5, two gums at 6, a beech at 7, a hickory and dogwood at 8, a gum at C, a black oak at D, a white oak at F, two maples at G, a chesnut, black oak, and beech at 2 on the line between G and H, a poplar and two beeches at H, a white oak at I, a sugar tree at K, a beech and ash at L, a red oak and dogwood at M, two poplars at 2 on the line between M and N, a white oak at 2 on the line IO, a white oak and beech at O, a white oak at 1 on the line OP, a white oak and poplar at P, a white oak at 2 on the line PQ, a white oak and maple at R, a chesnut oak at T, a chesnut oak and maple at 1 on the line TU, a chesnut and maple at 2 on said line, a birch at U, and two services at 3 between U and W. The lines AC, CD, DE, AF, FH, FI, LN, IO, OP, PQ, OT, TU, and part of the line between U and 3 are marked with ancient marks; I also run from the beech and ash at L to two beeches at Y, and from thence to a maple at Z, and found marked line trees between L and Y, and marked line trees going N. 80° E. from Z, also marked lines going N. 80° E. and S. 80° W. from the sugar at K. It is to be understood that I did not run all the lines above stated the time of the date of this survey; some of them I had run at a former time, but was advised by the parties, or their attorneys, that it was not necessary to run the same lines which I had formerly run.

THOMAS HAYMOND, *S. H. C.*

22*d September*, 1825.

The plaintiff, in order to show the title of his lessors to the land in controversy, represented by the red lines on said draft, gave in evidence to the

* For draught see original.

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jury the patent from the Commonwealth under which they claim, which patent is in the words and figures following, to wit:

Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that, by virtue and in consideration of part of a land office treasury warrant 15,633, issued the eighth day of May, 1783, there is granted by the said Commonwealth unto Messrs. Reed and Forde, assignees of Michael Ryan, a certain tract or parcel of land, containing eight thousand acres, by survey bearing date the twenty-third day of December, 1784, lying and being in the county of Monongalia, near a large branch of French creek, adjoining lands of George Jackson on the south side, and bounded as followeth, to wit: beginning at a maple, and running thence S. 10° E. 1000 poles to a poplar, S. 80° W. 1280 poles to a white oak, N. 10° E. 1000 poles to two white oaks, N. 80° E. 1280 poles to the beginning, with its appurtenances: to have and to hold the said tract or parcel of land, with its appurtenances, to the said Messrs. Reed and Forde, and their heirs for ever.

In witness whereof, the said Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the nineteenth day of May, in the year of our Lord one thousand seven hundred and eighty-six, and of the Commonwealth the tenth.

P. HENRY.

A copy from record. Teste,

W. G. PENDLETON, *Reg. L. Off.*

Land Office, 27th June, 1821.

The plaintiff then, for the purpose of shewing the identity of the land in controversy with that granted by said patent, gave in evidence a copy of the plat and certificate of survey upon which said patent is founded, and the plats and certificates of survey of the various other tracts represented on said draught; which several plats and certificates of survey are in the words and figures, lines and letters, following, to wit:

(Copy of the Plat and Certificate of Survey upon which said Patent is founded.*)

December 23d, 1784. Surveyed for Messrs. Reed and Ford, assignees of Thomas Proctor, assignee of M. Ryan, eight thousand acres of land in Monongalia county, on part of a land office treasury warrant of ten thousand acres, No. 15,633, dated the 8th of March, 1783, entered the 7th of April, 1784, beginning near a large branch of French Creek, adjoining land of George Jackson on the south side, bounded as follows, viz:

Beginning at a maple, and running thence S. 10° E. 1000 poles to a poplar, S. 80° W. 1280 poles to a white oak, N. 10° E. 1000 poles to two white oaks, N. 80° E. 1280 to the beginning.

HENRY FINK,
Assistant to Sam. Hanway, S. M. C.

Platted by a scale 300 poles per inch; no variation.

JAMES FARRY and JOHN BOULTINGHOUS. } *Chainbearers.*

* For plat see original.

A copy from the original. Teste,

WM. G. PENDLETON, *Reg. L. Off.*

Land Office, 27th June, 1821.

(Copy of an Entry, Survey, and Certificate of Henry Banks, Numbered 11, to wit:)

Feb. 7th, 1784. Captain George Jackson, for Henry Banks, enters 3000 acres, part of a land office treasury warrant for 30,000 acres, No. 18,552, dated 7th August, 1783, on French Creek, beginning two miles below the Big Mud lick, and extending up both sides of said creek 4½ miles, including said lick.

A copy. Teste,

WM. HAYMOND, *S. H. C.*

21*st June,* 1816.

18th March, 1786. Surveyed for Henry Banks 3000 acres of land in Harrison county, by virtue of part of a land office treasury warrant for 30.000 acres, No. 18,552, dated 7th August, 1783, situate on both sides of French Creek, a branch of Buckannon River, including the Mud lick, and bounded as followeth, viz: beginning at a white oak near said creek, and running thence S. 10° E. 500 poles to a maple, thence S. 80° W. 960 poles to two white oaks, N. 10° W. 500 poles, crossing said creek, to a white oak, N. 80° E. 960 poles, crossing the said creek to the beginning.*

No variation.

HENRY FINK,

Assistant to W. Haymond, S. H. C.

A copy of the record. Teste,

WM. HAYMOND, *S. H. C.*

21*st June,* 1816.

(Copy of Plat and Certificate, Numbered 3.*)

January 14th, 1785. Surveyed for Thomas Laidley, assignee of Michael Ryan, four thousand acres of land in Monongalia county, on part of a land office treasury warrant of ten thousand acres, No. 18,699, dated the 14th August, 1783, adjoining on the south land entered by George Jackson for Henry Banks, his second entry on French Creek, bounded as follows, viz: beginning on the head of the West Fork at a chesnut, and running thence S. 80° W. 1280 poles to a maple, N. 10° W. 500 poles to a white oak, N. 80° E. 1280 poles to two white oaks, S. 10° E. 500 poles to the beginning.

JAMES SCOTT,

Assistant to Sam. Hanway, S. M. C.

Platted on a scale 300 poles per inch; no variation.

James Farry and John Bollinghous. } *Chainbearers.*

A copy from the original. Teste,

WM. G. PENDLETON, *Reg. L. Off.*

Land office, 28th June, 1821.

* For plats see original.

184.

(Copy of Plat and Certificate, Numbered 4.*)

December 24th, 1784. Surveyed for Henry Banks 4000 acres of land in Harrison county, in part of a land office treasury warrant of 30,000 acres, No. 18,552, on the Black Lick fork of French Creek, bounded as followeth, viz: beginning at a maple near said fork, and running thence S. 80° W. 1288 poles to a white oak, N. 3° W. 500 poles to two white oaks, N. 80° E. 1288 poles to a white oak, S. 3° E. 500 poles to the beginning.

HENRY FINK,
Assistant to W. Haymond, S. H. C.

Platted by a scale of 200 poles to an inch; no variation.

A copy of the record. Teste,
22d May, 1828. WM. HAYMOND, *S. H. C.*

(Copy of Plat and Certificate, Numbered 5.*)

December 13th, 1784. Surveyed for John Young, assignee of Moses Tandy, four thousand acres of land in Monongalia county, on part of a land office treasury warrant of four thousand three hundred fifty-nine and a quarter, No. 17,719, dated the 12th of July, 1783, on the Glady fork of Stone Coal Creek, beginning at the head and extending down the same, and bounded as followeth, viz: beginning at a black oak corner to lands entered by George Jackson, and running thence N. 3° W. 1001 poles, crossing waters of Stone Coal Creek, to a beech, thence N. 80° E. 641 poles, crossing a branch of said creek, to a white oak, thence S. 3° E. 1001 poles, by lands surveyed for Thomas Laidley to a white oak, thence S. 80° W. 640 poles, crossing waters by lands of said Jackson, to the beginning.

HENRY FINK,
Assistant to Sam. Hanway, S. M. C.

Platted by a scale of 200 poles to the inch.

A copy from the original. Teste,
WM. G. PENDLETON, *Reg. L. Off.*
Land Office, 27th June, 1821.

December 3d, 1784. Surveyed for Thomas Laidley, assignee of William Strother, five thousand acres of land in Monongalia county, on a land office treasury warrant, No. 19,589, dated the 26th of September, 1783, entered the 17th of April, 1784, adjoining and below his 9th entry on the Glady fork of Stone Coal Creek, and bounded as followeth, to wit: beginning at a black oak, corner to his 4000 acre survey on said fork, and running thence by lands of George Jackson N. 80° W. 640 poles, crossing a branch of French Creek, to a white oak, thence N. 21½° W. 1010 poles, crossing the Glady fork, to two gums, thence N. 80° E. 960 poles to a beech, thence S. 3° E. 1002 poles by said Laidley's 4000 acre survey, crossing two branches of French Creek, to the beginning.*

HENRY FINK,
Assistant to Sam. Hanway, S. M. C.

Platted by a scale of 200 poles to the inch; no variation.

JOHN BOULTINGHOUSE, } *Sworn Chainbearers.*
JAMES MCKENNEY, }

* For plats see original.

(Endorsed.) I do hereby make over and assign all my right, title, interest, property and claim, of the within five thousand acres, to Samuel Young, his heirs or assigns, for value of him received. Philadelphia, April 14th, 1785.

THOMAS LAIDLEY.

Witness present,
JOHN YOUNG.

The foregoing is a true copy of the original plat and certificate of survey, and of the assignment endorsed.

Teste, WM. G. PENDLETON, *Reg. L. Off.*
Land Office, 28th June, 1821.

(Copy of Plat and Certificate, Numbered 7.*)

December 13th, 1784. Surveyed for Thomas Laidley, assignee of Samuel How, five thousand acres of land in Monongalia county, on a land office treasury warrant, No. 19,597, dated the 26th of September, 1783, entered the 7th of April, 1784, adjoining his 10th entry on the south side, and extending across the dividing ridge to the waters of French Creek, and bounded as followeth, viz: beginning at a white oak, corner to his third survey on said creek, and running thence by land entered by George Jackson, S. 80° W. 960 poles, crossing Slab fork and a branch of the same, to a gum, thence N. 3° W. 1002 poles, crossing Stone Coal Creek, to a white oak, thence N. 80° E. 640 poles to two gums, thence S. 21½° E. 1010 poles by said Laidley, crossing Stone Coal to the beginning.

Platted by a scale of 200 poles to the inch; no variation.

HENRY FINK,
Assistant to Sam. Hanway, S. M. C.

JOHN BOULTINGHOUSE,
JAMES MCKENNEY, } *Sworn Chainbearers.*

(Endorsed.) I do hereby assign and make over unto Doctor Benjamin Say, and to his heirs and assigns for ever, all my right, title, interest, claim, property and demand whatsoever, of the within survey of five thousand acres of land, for value of him received; and I do desire that the patent may issue in the name of the said Doctor Benjamin Say, and as his property. In witness whereof, I have hereunto set my hand and seal, at Philadelphia, this seventh day of March, one thousand seven hundred and eighty-five.

THOMAS LAIDLEY, [SEAL.]

Signed, sealed and delivered in presence of us,
THOMAS SAY,
JAMES BONSALL.

The foregoing is a true copy of the original plat and certificate of survey, and of the assignment endorsed.

Teste, WM. G. PENDLETON, *Reg. L. Off.*
Land Office, 28th June, 1821.

* For plats see original.

188;

(Copy of Plat and Certificate, Numbered 8.*)

December 23d, 1784. Surveyed for Messrs. Reed and Forde two thousand acres of land in Monongalia county, on part of a land office treasury warrant of ten thousand acres, No. 15,633, dated the 8th of May, 1783, adjoining and above land of said Reed and Ford on French Creek, and bounded as followeth, viz: beginning on the head of a left hand branch of French Creek at a poplar, and running thence S. 80° W. 640 poles to a white oak, N. 10. W. 500 poles to two ash trees, N. 80° E. 640 poles to an ash tree, S. 10° E. 500 poles to the beginning.

HENRY FINK,
Assistant to Sam. Hanway, S. M. C.

Platted on a scale 200 poles to the inch; no variation.

JAMES FARRY and JACOB YOUNGMAN, } *Chainbearers.*

A copy from the original. Teste,
WM. G. PENDLETON, *Reg. L. Off.*
Land Office, 28th June, 1821.

(Copy of a Plat and Certificate, Numbered 9.*)

December 13th, 1784. Surveyed for Thomas Laidley, assignee of Thomas Nesbit, five thousand acres of land in Monongalia county, on a land office treasury warrant, No. 19,587, dated the 16th of September, 1783, on Slab Camp fork of French Creek, adjoining lands of Daniel Fink, and extending up the said fork, and bounded as followeth, viz: beginning at a walnut, corner to said Laidley's eight thousand acres survey on said fork, and running thence S. 10° E. 500 poles, crossing the creek, to an ash, thence S. 80° W. 960 poles to a dogwood, thence N. 10° W. 500 poles, crossing a branch of the said fork of Monongalia river, to a poplar, thence N. 3° W. 502 poles to a gum, thence N. 80° E. 640 poles to two white oaks, thence S. 3° E. 502 poles by lands entered by George Jackson, to two maples, thence N. 80° E. 320 poles, by lands entered by said Jackson, to the beginning.

HENRY FINK,
Assistant to Sam. Hanway, S. M. C.

Platted by a scale of 200 poles to the inch.

A copy from the original. Teste,
WM. G. PENDLETON, *Reg. L. Off.*
Land Office, 27th June, 1821.

(Copy of Plat and Certificate, Numbered 10.*)

January 14th, 1785. Surveyed for Messrs. Reed and Ford, assignee of M. Ryan, one thousand acres of land in Monongalia county, on part of a land office treasury warrant, 10,000 acres, No. 15,654, dated the 8th of May, 1783, entered 7th April, 1784, adjoining their 9000 acres survey on the west fork of Monongalia river, and bounded as followeth, viz: beginning at a dogwood, corner to Reed and Ford, and running thence N. 80° E. 320 poles to a black oak, thence S. 10° E. 500 poles, crossing a branch of the

* For plats see original.

west fork, to two white oaks, S. 80° W. 320 poles to a white oak, N. 10° W. 500 poles, by Reed and Ford's said survey, crossing the said branch of the west fork, to the beginning.

HENRY FINK,
Assistant to Sam. Hanway, S. M. C.

Platted by a scale of 100 poles to the inch; no variation.

JOHN BOULTINGHOUSE, JAMES FERRY, } *Sworn Chainbearers.*

(Endorsed.) We do assign to Mr. Samuel Young, his heirs and assigns, all our right and interest to the within survey, this twenty-eighth day of March, 1785; value received.

REED and FORDE.

Witness present,
ROBERT NORRIS.

I do hereby assign all my right, title, interest, property and claim of the within plat to Mr. Richard Mason, his heirs and assigns, for value of him received.

SAMUEL YOUNG.

Philadelphia, April 27th, 1785.

The foregoing is a true copy of the original plat and certificate of survey, and of the several assignments endorsed.

Teste, WM. G. PENDLETON, *Reg. L. Off.*
Land Office, 28th June, 1821.

(Copy of Plat and Certificate, Numbered 11.*)

January 14th, 1785. Surveyed for Thomas Laidley, assignee of Michael Ryan, six thousand acres of land in Monongalia county, on part of a land office treasury warrant of ten thousand acres, No. 18,699, dated the 14th of August, 1783, adjoining land entered for Henry Banks by George Jackson, and on the east side of said entry, bounded as followeth, viz: beginning at a maple, and running thence S. 80° W. 1000 poles to two gums, N. 10° W. 960 poles to a white oak, N. 80° E. 1000 poles to white oak, S. 10° E. 960 to the beginning.

HENRY FINK,
Assistant to Sam. Hanway, S. M. C

Platted by a scale 300 poles per inch; no variation.

JAMES FARRY and JOHN BOLLINGHOUS, } *Chainbearers.*

A copy from the original. Teste,
WM. G. PENDLETON, *Reg. L. Off.*
Land Office, 28th June, 1821.

(Copy of Plat and Certificate, Numbered 12.*)

January 15th, 1785. Surveyed for Messrs. Reed and Ford, assignees of M. Ryan, nine thousand acres of land in Monongalia county, on part of a land office treasury warrant of ten thousand acres, No. 15,654, dated the

* For plats see original.

186.

8th of May, 1783, entered the 7th of April, 1784, beginning at the head of the west fork of Monongalia river on the west side, and extending across a dividing ridge, the head of a creek, waters of Little Kenawha, and bounded as followeth: beginning at two gums, and running thence S. 80° W. 960 poles, crossing a branch, to a white oak, thence by lands surveyed for Thomas Laidley, N. 10° W. 1500 poles, crossing two large branches, waters of the Little Kenawha, to two white oaks, thence N. 80° E. 960 poles, crossing the west fork, to a sugar tree, thence S. 10° E. 1500 poles, crossing a branch of the west fork, to the beginning.

HENRY FINK,
Assistant to Samuel Hanway, S. M. C.

Platted by a scale of 300 poles to the inch; no variation.

JOHN BOULTINGHOUSE, JAMES FARRY, } *Sworn Chainbearers.*

(Endorsed.) We do assign to Mr. Samuel Young, his heirs and assigns, all our right and interest to the within survey, this twenty-eighth day of March, 1785; value received.

REED and FORDE.

Witness,
ROBERT NORRIS.

I do hereby assign all my right, title, interest, property and claim of the within plat to Mr. Richard Mason, his heirs and assigns, for value of him received.

SAMUEL YOUNG.

Philadelphia, April 27th, 1785.

The foregoing is a true copy of the original plat and certificate of survey, and of the several assignments endorsed.

Teste, WM. G. PENDLETON, *Reg. L. Off.*
Land Office, 28th June, 1821.

(Copy of Plat and Certificate, Numbered 13.*)

December 15th, 1784. Surveyed for Thomas Laidley, assignee of Samuel Howe, seven thousand acres of land in Monongalia county, on part of a land office treasury warrant of 10,000 acres, No. 19,596, dated the 26th of September, 1783, adjoining his 19th entry on waters of the Little Kenawha, and bounded as followeth, viz: beginning at a cucumber, corner to his 19th survey on said waters, and running thence N. 10° W. 500 poles to a white oak, thence N. 3° W. 1002, crossing a creek, to a black oak, thence N. 80° E. 320 poles to a dogwood, thence S. 3° E. 501 poles to a maple, thence N. 80° E. 640 poles, by lands of said Laidley, to a gum, S. 3° E. 501 poles, crossing a branch of the Kenawha, to a poplar, thence S. 10° E. 500 poles, another branch, to a dogwood, thence S. 80° W. 960 poles, by said Laidley's 19th survey on the waters of the Little Kenawha, to the beginning.

HENRY FINK,
Assistant to Samuel Hanway, S. M. C.

* For plat see original.

west fork, to two white oaks, S. 80° W. 320 poles to a white oak, N. 10° W. 500 poles, by Reed and Ford's said survey, crossing the said branch of the west fork, to the beginning.

HENRY FINK,
Assistant to Sam. Hanway, S. M. C.

Platted by a scale of 100 poles to the inch; no variation.

JOHN BOULTINGHOUSE, JAMES FERRY, } *Sworn Chainbearers.*

(Endorsed.) We do assign to Mr. Samuel Young, his heirs and assigns, all our right and interest to the within survey, this twenty-eighth day of March, 1785; value received.

REED and FORDE.

Witness present,
ROBERT NORRIS.

I do hereby assign all my right, title, interest, property and claim of the within plat to Mr. Richard Mason, his heirs and assigns, for value of him received.

SAMUEL YOUNG.

Philadelphia, April 27th, 1785.

The foregoing is a true copy of the original plat and certificate of survey, and of the several assignments endorsed.

Teste, WM. G. PENDLETON, *Reg. L. Off.*
Land Office, 28th June, 1821.

(Copy of Plat and Certificate, Numbered 11.*)

January 14th, 1785. Surveyed for Thomas Laidley, assignee of Michael Ryan, six thousand acres of land in Monongalia county, on part of a land office treasury warrant of ten thousand acres, No. 18,699, dated the 14th of August, 1783, adjoining land entered for Henry Banks by George Jackson, and on the east side of said entry, bounded as followeth, viz: beginning at a maple, and running thence S. 80° W. 1000 poles to two gums, N. 10° W. 960 poles to a white oak, N. 80° E. 1000 poles to white oak, S. 10° E. 960 to the beginning.

HENRY FINK,
Assistant to Sam. Hanway, S. M. C

Platted by a scale 300 poles per inch; no variation.

JAMES FARRY and JOHN BOLLINGHOUS, } *Chainbearers.*

A copy from the original. Teste,
WM. G. PENDLETON, *Reg. L. Off.*
Land Office, 28th June, 1821.

(Copy of Plat and Certificate, Numbered 12.*)

January 15th, 1785. Surveyed for Messrs. Reed and Ford, assignees of M. Ryan, nine thousand acres of land in Monongalia county, on part of a land office treasury warrant of ten thousand acres, No. 15,654, dated the

* For plats see original.

186.

8th of May, 1783, entered the 7th of April, 1784, beginning at the head of the west fork of Monongalia river on the west side, and extending across a dividing ridge, the head of a creek, waters of Little Kenawha, and bounded as followeth: beginning at two gums, and running thence S. 80° W. 960 poles, crossing a branch, to a white oak, thence by lands surveyed for Thomas Laidley, N. 10° W. 1500 poles, crossing two large branches, waters of the Little Kenawha, to two white oaks, thence N. 80° E. 960 poles, crossing the west fork, to a sugar tree, thence S. 10° E. 1500 poles, crossing a branch of the west fork, to the beginning.

HENRY FINK,
Assistant to Samuel Hanway, S. M. C.

Platted by a scale of 300 poles to the inch; no variation.

JOHN BOULTINGHOUSE, } *Sworn Chainbearers.*
JAMES FARRY, }

(Endorsed.) We do assign to Mr. Samuel Young, his heirs and assigns, all our right and interest to the within survey, this twenty-eighth day of March, 1785; value received.

REED and FORDE.

Witness,
ROBERT NORRIS.

I do hereby assign all my right, title, interest, property and claim of the within plat to Mr. Richard Mason, his heirs and assigns, for value of him received.

SAMUEL YOUNG.

Philadelphia, April 27th, 1785.

The foregoing is a true copy of the original plat and certificate of survey, and of the several assignments endorsed.

Teste, WM. G. PENDLETON, *Reg. L. Off.*
Land Office, 28th June, 1821.

(Copy of Plat and Certificate, Numbered 13.*)

December 15th, 1784. Surveyed for Thomas Laidley, assignee of Samuel Howe, seven thousand acres of land in Monongalia county, on part of a land office treasury warrant of 10,000 acres, No. 19,596, dated the 26th of September, 1783, adjoining his 19th entry on waters of the Little Kenawha, and bounded as followeth, viz: beginning at a cucumber, corner to his 19th survey on said waters, and running thence N. 10° W. 500 poles to a white oak, thence N. 3° W. 1002, crossing a creek, to a black oak, thence N. 80° E. 320 poles to a dogwood, thence S. 3° E. 501 poles to a maple, thence N. 80° E. 640 poles, by lands of said Laidley, to a gum, S. 3° E. 501 poles, crossing a branch of the Kenawha, to a poplar, thence S. 10° E. 500 poles, another branch, to a dogwood, thence S. 80° W. 960 poles, by said Laidley's 19th survey on the waters of the Little Kenawha, to the beginning.

HENRY FINK,
Assistant to Samuel Hanway, S. M. C.

* For plat see original.

Platted by a scale of 300 poles to the inch; no variation.

JOHN BOULTINGHOUSE,
JAMES KENNEY, } *Sworn Chainbearers.*

(Endorsed.) I do hereby assign and make over all my right, title, interest and claim of the within seven thousand acres of land to Mr. Samuel Young, his heirs and assigns, for value of him received.

THOMAS LAIDLEY.

Philadelphia, March 24th, 1785.
Witness present,
WILLIAM YOUNG,

I do assign all my right and interest of the within to Mr. C. P. Raguet or his assigns, for value received.

SAMUEL YOUNG.

Philadelphia, August 3, 1785.
Witness present,
W. FINNEY.

(Additional assignment on a copy filed with the above.)

I do hereby assign my right, title, interest and demand to the within mentioned survey of seven thousand acres unto John Ligney, his heirs, administrators and assigns for ever, for value received; and I desire the patent for the same may be issued in the name of the said John Ligney, his heirs, administrators and assigns.

Witness my hand and seal this 10th day of August, 1786.

C. P. RAGUET.

Teste,
W. FINNEY, N. RAGUET.

A true copy of the original plat and certificate of survey, and the assignments endorsed thereon, and filed therewith.

Teste, WM. G. PENDLETON, *Reg. L. Off.*
Land Office, 30th June, 1821.

(Copy of Plat and Certificate, Numbered 14.*)

December 13th, 1784. Surveyed for Thomas Laidley, assignee of Thomas Nesbitt, five thousand acres of land in Monongalia county, on a land office treasury warrant, No. 19,588, dated the 26th of September, 1783, entered 7th April, 1784, adjoining and above his 12th entry, extending up and bounded as followeth, viz: beginning at a gum, corner to said Laidley, thence S. 80° W. 640 poles, crossing a branch of the west fork of the Monongalia river, to a maple, thence N. 3° W. 501 poles to a dogwood, S. 80° W. 320 poles to a black oak, thence N. 3° W. 501 poles to two gums, thence N. 80° E. 960 poles, crossing said branch, to a white oak, thence S. 3° E. 1002 poles, crossing a run by lands of Thomas Laidley, to the beginning.

HENRY FINK,
Assistant to Samuel Hanway, S. M. C.

Platted by a scale of 300 poles to the inch; no variation.

JOHN BOULTINGHOUSE,
JAMES MCKENNEY, } *Sworn Chainbearers.*

* For plat see original.

187.

(Endorsed.) I do hereby assign and make over unto Doctor Benjamin Say, and to his heirs and assigns for ever, all my right, title, interest, claim, property and demand whatsoever, of the within survey for five thousand acres of land, for value of him received; and I do desire that the patent may issue in the name of the said Doctor Benjamin Say, and as his property.

In witness whereof I have hereunto set my hand and seal, at Philadelphia, this seventh day of March, one thousand seven hundred and eighty-five.

THOMAS LAIDLEY, [L. S.]

Signed, sealed, and delivered in presence of us,
THOMAS SAY,
JAMES BONSALL.

The foregoing is a true copy of the original plat and certificate of survey, and of the assignment endorsed.

Teste, WM. G. PENDLETON, *Reg. L. Off.*
Land Office, 28th June, 1821.

(Copy of a Plat and Certificate of Survey of Daniel Fink, of 300 acres.*)

12th June, 1786. Surveyed for Daniel Fink, assignee of Joseph Neal, 300 acres of land, by virtue of part of a pre-emption warrant of 1000 acres, No. 2278, issued 16th October, 1782, lying and being in the county of Harrison, on French Creek, at the mouth of the Black Lick run, and bounded as followeth, to wit: beginning at two poplars near said creek, and running thence S. 77° W. 300 poles, crossing a drain, to two poplars, N. 13° W. 160 poles to a white oak, N. 77° E. 300 poles to two gums and a poplar, S. 13° E. 160 poles, crossing said creek twice, to the beginning.

HENRY FINK,
Assistant to Wm. Haymond, S. H. C.

A copy of the record. Teste,

THOMAS HAYMOND, *S. H. C.*

19*th May*, 1826.

(Copy of Plat and Certificate of Survey of Thomas Laidley's 2000 acres on Cutright's Run.*)

November 15, 1784. Surveyed for Thomas Laidley, assignee of William Strother, two thousand acres of land in Monongalia county, on a land office treasury warrant of two thousand acres, No. 19,563, dated the 22d September, 1783, entered the 7th April, 1784, adjoining above lands surveyed for Daniel Fink on Cutright run, extending up both sides of said run, bounded as followeth, viz: beginning near a large drain of Buckhanan on the west side of said run at a white oak, and running thence S. 3° E. 640 poles to a white oak, S. 87° W. 500 poles to two white oaks, N. 3° W. 640 poles to two beeches, N. 87° E. 500 poles to the beginning.

HENRY FINK,
Assistant to Samuel Hanway, S. M. C.

Platted by a scale of 200 poles to the inch; no variation.

DENNIS KELY and E. KELY, } *Chainbearers.*

* For plats see original.

This is a copy of a survey received into this office on the 9th of November, 1785, and on which a grant issued 16th May, 1786.

Teste, WM. SELDEN, *R. L. Off.*

September 16, 1827.

(Copy of a Plat and Certificate of Survey for Henry Banks.*)

December 24th, 1784. Surveyed for Henry Banks 1000 acres of land in Harrison county, in part of a land office treasury warrant of 30,000 acres, No. 18,552, on the waters of the Black Lick fork of French Creek, bounded as followeth, viz: beginning at a white oak, corner to another survey of said Banks, and running thence S. 80° W. 322 poles to a gum, N. 3° W. 500 poles to a white oak, N. 80° E. 322 poles to two white oaks, S. 3° E. 500 poles, along a line of his said survey, to the beginning.

HENRY FINK,

Assistant to Wm. Haymond, S. H. C.

Platted by a scale of 200 poles to an inch.

A copy of the record. Teste,

THOMAS HAYMOND, *S. H. C.*

22*d May*, 1823.

Copies of the entries upon which the said several plats and certificates of survey were founded were given in evidence to the jury, which several entries are in the words and figures following, to wit:

Entries.

April 7th, 1784. No. 15. Thomas Laidley, for Michael Ryan, enters a land office treasury warrant of 10,000 acres, No. 18,699, dated the 14th of August, 1783, adjoining the south side of lands entered by George Jackson on French Creek for Henry Banks, being his 2d entry on said creek for said Banks.

A copy. Teste,

SAM. HANWAY, *S. M. C*

April 7th, 1784. No. 14. Thomas Laidley, for Reed and Ford, assignees of Thomas Proctor, assignee of M. Ryan, enters a land office treasury warrant of 10,000 acres, No. 15,633, dated the 8th of March, 1783, adjoining John Cutright's survey at the mouth of French Creek, and extending up both sides said creek five miles.

A copy. Teste,

SAM. HANWAY, *S. M. C.*

February 7th, 1784. Captain George Jackson, for Henry Banks, enters 3,000 acres, part of a land office treasury warrant of 30,000 acres, No. 18,552, dated 7th August, 1783, on French Creek; beginning two miles below the Big Mud lick, and extending up both sides said creek 4½ miles, including said lick.

Copied from the record of a copy transmitted from Monongalia county.

THOMAS HAYMOND, *S. H. C.*

28*th October*, 1823.

February 7th, 1784. George Jackson, for Henry Banks, enters 5,000 acres, part of a land office treasury warrant of 30,000 acres, No. 18,552, beginning at the Black Lick fork of French Creek, a branch of Buckhanon River, and extending up, including both forks, 5½ miles.

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Copied from the record of a copy transmitted from Monongalia county.
THOMAS HAYMOND, *S. H. C.*

28th October, 1823.

April 7th, 1784. No. 9. Thomas Laidley, for John Young, assignee of Moses Tandy, enters a land office treasury warrant of 4,000 acres, No. 17,719, dated the 12th of July, 1783, on the Glady fork of Stone Coal creek, beginning at the head and extending down 470 poles.

A copy. Teste,
SAM. HANWAY, *S. M. C.*

April 7th, 1784. Thomas Laidley, assignee of William Strother, enters a land office treasury warrant of 2,000 acres, No. 19,563, dated 22d of September, 1783, adjoining lands of Daniel Fink on Cutright's run, and extending up both sides said run one mile and a half.

A copy. Teste,
SAM. HANWAY, *S. M. C.*

February 24th, 1783. Daniel Fink enters 200 acres, part of a pre-emption warrant, No. 2,274, dated 16th October, 1782, adjoining his residence right on a left-hand fork of French Creek.

Copied from the record of an entry transmitted from Monongalia county.
THOMAS HAYMOND, *S. H. C.*

27th October, 1823.

February 24th, 1783. Daniel Fink, enters 400 acres, part of a pre-emption warrant, No. 2,274, dated the 16th day of October, 1782, adjoining an improvement made by Benjamin Cutright, to include the crab orchard on Cutright's run.

A copy. Teste, SAM. HANWAY, *S. M. C.*

February 24th, 1783. Daniel Fink, assignee of Joseph Neal, enters 400 acres, part of a pre-emption warrant for 1,000 acres, No. 2,278, dated the 16th day of October, 1782, on a right hand fork of French Creek, called the Slab Camp fork, to begin at the mouth, and extend up both sides for quantity.

Copied from the record of a copy transmitted from Monongalia county.
THOMAS HAYMOND, *S. H. C.*

27th October, 1823.

April 7th, 1784. No. 10. Thomas Laidley, for William Strother, enters a land office treasury warrant of 5,000 acres, No. 19,589, dated the 26th of September, 1783, adjoining and below his 9th entry, and extending down both sides said run 500 poles.

A copy. Teste, SAM. HANWAY, *S. M. C.*

April 7th, 1784. No. 11. Thomas Laidley, for Samuel How, enters a land office treasury warrant of 5,000 acres, No. 19,589, dated the 26th of September, 1783, adjoining his 10th entry on the southwest side, and extending across the dividing ridge to the waters of French Creek.

A copy. Teste, SAM. HANWAY, *S. M. C.*

10th September, 1792. 881. John Jackson enters 1,000 acres, part of his last warrant that is entered in page , on the waters of French Creek, adjoining above lands of Henry Banks, and extending up the creek 320

poles, it being his 2d survey of 1,000 acres, lying on the Mud Lick fork, and it also joins one corner of Daniel Fink's survey of 600 acres.

A true copy of the records,

THOMAS O. WILLIAMS, *S. R. C.*

17th February, 1813. Isaac Collins enters 50 acres, part of a land office exchange treasury warrant for 100 acres, No. 2,125, dated 4th January, 1811, on the Laurel Run, a drain of the left hand fork of the west fork; beginning at the forks of said run, and extending up and down the northerly side of the same, and out, for quantity.

A copy. Teste, THOMAS HAYMOND, *S. H. C.*

1st September, 1828.

It appeared from the parol evidence introduced in order to identify said land in controversy, that the same, at the date of said patent under which the lessors of the plaintiff claim, and at the date of the said plat and certificate of survey upon which said patent is founded, was situate in the county of Harrison, and not in the county of Monongalia, as stated in said patent and said plat and certificate of survey; but that said land in controversy, at the date of the entry upon which said plat and certificate of survey was made, was situate in the county of Monongalia, and became embraced within the limits of the county of Harrison by force of the act of the General Assembly establishing the county of Harrison, which act of Assembly is in the words and figures following, to wit:

May, 1784, 8*th of the Commonwealth. Chapter VI. An act for dividing the County of Monongalia.*

I. *Be it enacted by the General Assembly*, That, from and after the twentieth day of July next, the county of Monongalia shall be divided into two distinct counties, by a line to begin on the Maryland line, at the Fork Ford on the land of John Goff, thence a direct course to the head waters of Big Sandy creek, thence down the said creek to Tyger's Valley Fork of Monongalia river, thence down the same to the mouth of the West Fork river, thence up the same to the mouth of Biggerman's creek, thence up the said creek to the line of Ohio county; and that part of the said county lying south of the said line shall be called and known by the name of Harrison, and all the residue of the said county shall retain the name of Monongalia; that a court for the said county of Harrison shall be held by the justices thereof on the third Tuesday in every month after such division shall take place, in such manner as is provided by law for other counties, and shall be by their commissioners directed; that the justices to be named in the commission of the peace for the said county of Harrison shall meet at the house of George Jackson, at Bush's old fort, on Buchanan river, in the said county, upon the first court day after the said division shall take place, and, having taken the oaths prescribed by law, and administered the oath of office to and taken bond of the sheriff, according to law, proceed to appoint and qualify a clerk, and fix upon a place for holding courts in the said county, at or as near the centre thereof as the situation and convenience will admit of; and thenceforth the said court shall proceed to erect the necessary public buildings at such place, and, until such buildings be completed, to appoint any place for holding courts as they shall think prope.. Provided always, that the appointment of a place for holding courts, and of a clerk, shall not

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be made unless a majority of the justices of the said county be present; where such majority shall have been prevented from attending by bad weather, or their being at the time out of the county, in such cases the appointment shall be postponed until some court day, when a majority shall be present; that the Governor, with advice of the Council, shall appoint a person to be first sheriff of the said county, who shall continue in office during the term, and upon the same conditions, as is by law appointed for other sheriffs.

II. *Provided always, and be it further enacted,* That it shall be lawful for the sheriff of the said county of Monongalia to collect and make distress for any public dues or officers' fees, which shall remain unpaid by the inhabitants thereof at the time such division shall take place, and shall be accountable for the same in like manner as if this act had not been made; and that the court of the said county of Monongalia, shall have jurisdiction of all actions and suits, in law or equity, which shall be depending before them at the time of the said division, and shall try and determine the same, and issue process and award execution thereon.

III. *And be it further enacted,* That the court of the said county of Monongalia shall account for and pay to the court of the said county of Harrison all such sums of money as shall or may be paid by the inhabitants of the said county of Harrison towards defraying the expense of erecting a court-house and other public buildings in the said county of Monongalia. That in all elections of a senator, the said county of Harrison shall be of the same district with the said county of Monongalia.

Evidence was relied on, on the part of the defendants, for the purpose of proving that the various marked lines represented by the said draught and report of the surveyor, and claimed on the part of the plaintiff to be lines of the land in controversy, and of various other tracts designated upon said draught, were not actually run or marked as lines of the land in controversy and the other tracts aforesaid, but had been run and marked by Henry Fink, a deputy surveyor of Monongalia county, but who then resided in the county of Harrison, with the view of laying off the greater part of the tract of country represented on said draught into surveys of about 1,000 each; that he was employed and paid for that purpose, by the persons for whom the aforesaid plats and certificates of survey were afterwards made; that after said marked lines had been so run, the said plats and certificates of survey were made out by protraction, not by the said Henry Fink, but by some other person or persons, not authorized by law; that said plats and certificates of survey were never recorded in the surveyor's office of Monongalia county, nor there filed, but were surreptitiously returned to the Register's office, and patents obtained thereupon. It was contended, on part of the defendants, that the marked lines represented on said draught as lines of the land in controversy were not lines thereof, and that the evidence in the cause did not justify the jury in regarding them as lines of the land in controversy, in preference to other marked lines, represented upon said draft. Evidence was given, on the part of the plaintiff, for the purpose of proving that the marked lines aforesaid were actually run and marked by said Fink as lines of the tract of 8,000 acres, and of various other tracts represented upon said draught; and that plats and certificates of survey were made out by him in conformity with the lines so run and marked, and were by him delivered to the agent of the patentees, who gave them to the principal sur-

veyor to be recorded; and that the said surveyor afterwards delivered the plats and certificates of said surveys to the patentees, who placed them in the land office, on which the grants issued, and copies of which are herein before referred to. It was contended, on the part of the defendants, that the said land in controversy was not embraced by the calls of said patent under which the lessors of the plaintiff claim; that the natural objects, lines, and adjacent lands, called for in said patent, were not those represented on said draught in designating thereupon said land in controversy; and that the marked lines represented upon said draught as lines of the land in controversy, are in fact the lines, not of the plat and certificate of survey upon which said patent is founded, but of other plats and certificates of survey; and that there were no calls whatever in said patent justifying the location of said land in controversy, as contended for on the part of the plaintiff. For the purpose of identifying the said land in controversy with that granted by the said patent, parol and other evidence was introduced by the plaintiff, in order to establish several marked trees as corners of other tracts represented on said draught, the boundaries of which tracts, it was contended, on the part of the plaintiff, tended to establish the identity of the land in controversy with that granted by said patent. For the purpose of shewing that one of said marked trees was not a corner of one of said tracts, that is to say, was not the corner represented on the said draught by the letter A as a corner of John Young's 4,000 acres, the defendant's counsel offered to introduce a witness to prove that on the trial of a former action of ejectment, brought by the present lessors of the plaintiff against some of the defendants in the present action, to recover the land now in controversy, a witness examined on that trial, who is since dead, swore that an ancient marked corner tree was found by him at said point A, of a different kind of timber from that called for in said Young's patent; but the evidence so offered was rejected by the court as inadmissible. After the evidence had been closed, and the cause had been argued before the jury, the counsel for the plaintiff moved the court to give the jury the following instructions, to wit:

That the grant to the lessor of the plaintiff, introduced in evidence in this cause, and which is in the words and figures following, to wit, "Patrick Henry," &c., was a complete appropriation of the land therein described, and vested in the patentee the title, and that any defects in the preliminary steps by which it was acquired are cured by the said grant.

And the plaintiff further moved the court to instruct the jury that the said grant is a title from its date, and conclusive against all claimants whose rights are not derived under a previous grant to that of the lessors of the plaintiff. And the plaintiff further moved the court to instruct the jury that it does not affect the validity of the said grant to the lessors of the plaintiff, if it appears that the entry on which the survey upon which said grant issued purports to have been made, contained other or different land from that actually surveyed. After said instructions had been moved for by the plaintiffs' counsel, the defendants' counsel moved the court to give the jury the following instructions, to wit:

1. The name of the county being mentioned in the aforesaid patent as that in which the land thereby granted was situate, the plaintiff is not at liberty to prove by parol that the said land was in fact situate in a different county.

2. As the said patent states the land thereby granted to lie in the county of Monongalia, the patentees, and those deriving title from them, can only

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recover land situate in that county, and cannot, by force of the other terms of description employed in said patent, recover land situate in the county of Harrison at the date of said patent.

3. It appearing from the said plat and certificate of survey upon which said patent is founded, that the survey thereby evidenced was made in the county of Monongalia, and it appearing from the evidence introduced on the part of the plaintiff to identify said land, that it was situate at the time of said survey in the county of Harrison, the said patent is void, because said survey was made without lawful authority.

4. If various marked lines are found corresponding with the same call of said patent, the mere coincidence of any one of those marked lines with the call of the patent does not establish that line as a line called for in the patent.

5. If there are no calls in the said patent justifying the location of the land granted, as contended for by the plaintiff, he cannot succeed in establishing his claim by relying upon extrinsic evidence.

6 Proof that the land claimed in this action was surveyed for the patentees, by evidence contradicting the calls of said patent, does not establish the right of the patentees, and of those claiming under them, to the land claimed as aforesaid.

7. An entry in a county which is afterwards divided does not, after the division, authorize a survey in the original county, if the land lies in the new county.

The instructions moved for by the plaintiff's counsel, as aforesaid, were objected to by the defendants' counsel, and the instructions moved for by the defendants' counsel, as aforesaid, were objected to by the plaintiffs' counsel. The court gave to the jury the said instructions moved for by the plaintiff's counsel, and refused to give the said instructions moved for by the defendants' counsel, except the first, which first instruction was given to the jury modified as follows, to wit:

"That if land warrants be entered in the office of the surveyor of a particular county, and, before the same be surveyed, the territory in which the land located lies shall be erected into a new county, and the survey and grant afterwards perfected describe the land to be situate in the former county, the grant is not thereby void, and the plaintiff may shew by parol evidence, extrinsic of the grant, and not inconsistent with its other descriptive calls, that the land lies within the new county." To the opinions of the court, rejecting the testimony offered in relation to the corner at A as aforesaid, giving the instructions moved for by the plaintiff's counsel as aforesaid, and refusing the instructions asked for by the defendants' counsel as aforesaid, the counsel for the defendants except, and pray that these their exceptions may be signed, sealed, and made a part of the record, which is accordingly done.

A. CALDWELL, [SEAL.]
Judge of the W. D. of Virginia.

Depositions, received under seal, opened in court, and used as evidence in this cause.

(Deposition of Thomas Carney, taken in June, 1825.)

The deposition of Thomas Carney, taken before us, the subscribers, justices of the peace for Lewis county, at the house of Samuel Gould, in the

said county, on the 23d day of June, 1825, to be read as evidence in a suit depending in the United States district court for the western district of Virginia, wherein the lessee of Reed and Ford is plaintiff, and Samuel Gould and others defendants; also in a suit depending in the same court, wherein the lessee of John Young is plaintiff, and Daniel Stringer and others defendants. Thomas Carney, being sworn, deposeth and saith:

Question by plaintiff. Did you ever see a corner on the Black Lick run? if so, how was it marked, what was its age, how long since you first saw it, who shewed it to you, whose corner was it reputed to be?

Answer. Yes; I saw a maple corner near the Black Lick run, on the westerly side of the run, and about four hundred yards from the mouth of said run; I think it was marked pointing westerly and southerly; the first time I saw the corner I think was about fifteen years ago; the marks then appeared old; I do not know any thing further about the age; John Hoye told me where to find it, and I found it according to his direction; it was reputed, in the year 1806 or 1807, by John Hoye, to be Archibald McCall's corner, and between that time and the year 1812 I heard it called McCall's corner by other persons.

Question by same. Was you acquainted with Henry Fink? if so, how did that acquaintance commence? Did you know of his making a connexion of surveys for Thomas Laidley on French Creek.

Answer. I was acquainted with Henry Fink in the fall of the year 1785. I became acquainted with Henry Fink at Winchester: he then employed me and three others to come with him to this country for the purpose of carrying the chain for him, while surveying lands for Doctor Bond and Thomas Laidley. I did not carry chain for him more than to make one small survey, but worked on the farm until the fall of the year 1786, except that I went with Edward Jackson to Mill Creek, in February, 1786, to make a survey for Thomas Adams. I did not know of Fink making a connexion of surveys on French Creek for Thomas Laidley, but heard him and his chain carriers, to wit, William Strange, William Roberts, and James Hearsly, the same men that came out with me, say that he did on French Creek and Buckhannan River, I think, for Bond and Laidley.

Question by same. Had you any conversation at any time with Daniel Stringer, in relation to the corner tree on Black Lick run. Did you inform him of the existence of said corner? Did he ever tell you since he saw that corner?

Answer. Yes, I told him there was a corner there: he told me a few days since he had seen a maple corner at the place I described.

Question by defendants. Is the maple you shewed to Thomas Haymond and others this day the same corner above mentioned?

Answer. Yes; and what makes me more positive, my name, which I put on the tree about the year 1810, is there yet.

Question by same. How many times had you been hunting with surveyors for that maple corner before you found it?

Answer. I think I was hunting for it three times with surveyors on the line before I found it.

Question by same. Did you not understand that Banks' survey lay on the south of McCall's?

Answer. I did, in or about the year 1811, understand that Banks' survey lay on the south of McCall's, and was about purchasing three thousand acres of Banks' survey there.

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Question by same. Who was with you when you found the maple corner?

Answer. William Haymond or Daniel Haymond.

Question by same. Did Hoye make corners when you was with him?

Answer. He made a poplar corner on a knob, on the ridge between waters of the Little Kenawha and French Creek, to wit, the run, Pascal Young lived on, and Bush run.

Question by same. Did Hoye tell you the maple corner would be worth one hundred dollars to you?

Answer. He did,

Question by same. How much is McCall to give you for finding it?

Answer. I do not know; he gave me five dollars to bear my expenses, and Mr. Duncan gave me fifteen dollars after I arrived at Clarksburg, and told me that McCall directed him to give it to me if I stood in need of it. There was no agreement between McCall and myself in relation to my pay. I was summoned when at Clarksburg to attend. And further this deponent saith not.

THOMAS CARNEY.

Sworn and subscribed before us,
ROBERT YOUNG, WM. J. DAVIS, *J. P.*

(Deposition of Thomas Carney, taken on 25th June, 1825.)

Deposition of Thomas Carney, taken before me, the subscriber, a justice of the peace for Lewis county, at the house of Philip Reger, in the county aforesaid, on the 25th day of June, 1825, to be read as evidence in a suit depending in the United States district court for the western district of Virginia, wherein the lessee of John Young is plaintiff, and Daniel Stringer and others defendants; also in a suit depending in the same court, wherein the lessee of Reed and Ford is plaintiff, and Samuel Gould and others defendants. Thomas Carney, being sworn, deposeth and saith:

Question by plaintiff. Did you ever see a corner on the Spruce fork of Stone Coal creek? if so, how was it marked, what was its age, how long since you first saw it, whose corner was it reputed to be, and was its reputation notorious among the neighbors?

Answer. I saw a white oak corner near to Spruce run, a branch of Stone Coal creek; it was marked pointing southerly and westerly; I do not know the age of the marks; I think the first time I saw it was in or about the year 1793; about four or five years afterwards, one Miller from Philadelphia, and George Arnold, requested me to shew them the said corner; I shewed it to them, and they called it John Young's corner, I think John Young's; and from that time until I left the neighborhood, which was in 1812, I have heard it called Young's corner by surveyors. I do not know that its reputation was notorious among the neighbours, but think I have heard numbers of them call it Young's corner.

Question by defendants. Did the persons you heard conversing about the corner know it themselves, or did they get their information from you?

Answer. I think they got their information from me.

Question by same. Did you understand that that white oak was Young's beginning corner?

Answer. I understood so from Miller and George Arnold.

Question by same. Did you know it to be called Young's corner before you shewed it to Miller and Arnold?

Answer. I do not recollect that I did.

Question by same. Is said white oak the same that you shewed to Thomas Haymond yesterday?

Answer. Yes. And further this deponent sayeth not.

THOMAS CARNEY.

Sworn and subscribed before me,

P. REGER.

(Deposition of John Hoye, received April term, 1828.)

UNITED STATES OF AMERICA, DISTRICT AND STATE OF VIRGINIA:

Be it remembered, that, on this 9th day of May, in the year of our Lord one thousand eight hundred and twenty-seven, at the house of John Burbridges, in the county of Hampshire, and State aforesaid, before me, Ephraim Dunn, one of the justices of the peace for the county aforesaid, personally appeared John Hoye, a witness for the plaintiff in a certain civil cause now depending in the district court of the said United States for the western district of Virginia, wherein Reed and Ford's lessee is plaintiff, and Daniel Stringer and others defendants; and the said witness being by me first carefully examined, and cautioned and sworn to testify the whole truth, makes oath, deposeth, and saith:

Question by plaintiff. Look at the plat and report here shewn to you, signed Thomas Haymond, and marked on the back with letter A, and state whether you ever had occasion to trace any of the lines of a connexion of surveys made for Thomas Laidley on French Creek, in what is now called Lewis county, and which surveys, or some of them, being patented to John Young and to Reed and Ford; if so, can you recognise any of the lines you traced on this map, and which of them? Please to designate them.

Answer. I had several times occasion to trace some of the lines of the connexion of surveys made for Thomas Laidley on Stone Coal and French Creek, as laid down in the plat and report of Thomas Haymond marked A, now shewn. He says he has several times run from a white oak, at the letter A on the plat now shewn, and which is on the Spruce fork of Stone Coal Creek, the beginning of John Young's survey of 4,000 acres, shaded blue on the plat; from that bounded white oak he run and found an old ancient marked line on the north side of the chain of surveys, that is, from A to B, in the same direction towards the letter C, marked on said plat. He thinks he found old marks as far as he went on said line, and believes it was as far as the figure 6 marked on the said plat; and from the aforesaid bounded white oak at letter A, he says he run S. 3° E. with an ancient marked line of John Young's survey of 4,000 acres on the east side of the chain of surveys, he believes to the letter F, and then S. 3° E. four or five hundred poles, and found a bounded maple, which he at first supposed to be the beginning of Reed and Ford's survey of 8,000 acres, shaded red on said plat, marked A, signed by Thomas Haymond, but on a second examination he found it was not their corner, as he could find no marked trees agreeing with the lines of their survey westerly. He then examined on in the S. 3° E. direction, and from the maple about 50 or 80 poles he found a bounded

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white oak, and he thinks two of them and a bounded maple, which maple was down and much decayed, but the chops was plain to be seen in the bark where it had been bounded; and he found old marked line trees from these bounded trees to agree with the lines of Reed and Ford's survey of 8,000 acres, shaded red: this was near Bull run, and he believes it to be at the letter I, marked on the plat now shewn, marked A. He further saith, he run the line of Reed and Ford's survey from the corner on Bull run S. 10° E., and found an old marked line agreeing with the line of their survey of 8,000 acres: he believes he run to the letter O on the aforesaid plat A. He says he run from the southeast corner of said Reed and Ford's survey of 8,000 acres, and he believes it to be at the letter O on said plat, S. 80° W., and found ancient marked trees on the line, agreeing with the lines of their survey. He further saith, he run from the corner near Bull run, S. 80° W., and found a marked line for some distance agreeing with the lines of Reed and Ford's survey of 8,000 acres, but, from his recollection, the line was badly marked, being some distance between the marked trees. When he run this line from the corner near Bull run, it was to find a survey of Thomas Laidley's, which lies to the westward of Reed and Ford's 8,000 acres, and to examine the quality of it, as there was a proposition from Standish Ford for this deponent and said Ford to purchase it jointly.

Question by same. Were you at any time at the corner marked A on the Spruce fork of Stone Coal? if so, describe the kind of tree, how marked, and whose corner it was reputed to be at this time; when did you first see it, who shewed it to you, and what was your object in going to it? and did you trace any lines from it, and whose lines, or the lines of what survey did you trace from it?

He answered: Twenty-odd years ago, and several times since, he was at a bounded white oak on the Spruce fork of Stone Coal creek, which is at the letter A on the plat now shewn, signed Thomas Haymond, and marked A. It was marked as a boundary to agree with John Young's survey of 4,000 acres, and was then generally reputed to be the beginning of his said survey of 4,000 acres, as now laid down on the aforesaid plat marked A, and signed by Thomas Haymond, and the lines shaded blue. It was first shewn to this deponent, he thinks, by Major John Jackson, who resided on Buckannon, but is not positive whether he was the first who shewed the said white oak corner; but this deponent is positive that said John Jackson once shewed him the corner, as above stated, and informed this deponent that it had been shewn to him by Fink, who made the chain of surveys as the beginning corner of John Young's aforesaid survey of 4,000 acres. This deponent further saith, that he went to it with a view of running from it to find Reed and Ford's survey of 8,000 acres, and other surveys laid down in the plat now shewn, marked A and signed Thomas Haymond. This deponent has stated, in answer to the first interrogatory, what lines he did run, and says he run some other of the divisional lines in said plat, but does not now recollect which.

Question by same. Did you ever see a corner tree on Bull run, at or about the place designated on the plat by the letter I, on the line shaded red? if so, what kind of tree was it, how was it marked, was it standing and alive, or had it fallen? do you know of what survey it was a corner? was any other tree marked about the same place? if so, by whom and for what purpose?

Answer. I was at a corner near Bull run, as stated in answer to the first interrogatory, and says it was, he believes, at the place designated on the plat by the letter I, at the corner of the survey of Reed and Ford's of 8,000 acres, the lines of which is shaded red. He says he thinks there was two bounded white oak trees, but is not positive whether it was one or two white oaks. He says he found at the same place, near the white oaks which was standing, a bounded maple, which was down and much decayed; but the chops was plain then, quite plain to be seen in the bark. He says he believed it to be the corner of the survey of 8,000 acres, shewn on said plat A by red lines, as the marked trees on the lines agreed with the lines of said survey of Reed and Ford of 8,000 acres, and the marks on the trees appeared to be old. He says he does not know who marked them, but supposed they was marked by Fink, who surveyed the chain of surveys, as the marks appeared to be as old as the white oak corner which he, Fink, shewed to John Jackson on the Spruce fork. The beginning of John Young's survey, and the marked trees on the line from that white oak to the corner on Bull run of Reed and Ford's survey, at the letter I on the plat A. all corresponding, led this deponent to believe it was the corner marked by Fink for said survey of 8,000 acres.

Question by same. Did you trace any of the lines of the survey designated on the plat by the red lines? if so, which of them? did you discover any lines or corner trees, and where were they situated?

Answer. I have, in my answer to the first and second interrogatories, answered this.

Question by same. Did you run the lines or any of them constituting the east side of the connexion of surveys represented by the plat? if so, state which of them, and what you discovered. Did the marked trees appear ancient, and to correspond with the kind called for by the original surveys made for Laidley? and did the marks appear to correspond with the age of the surveys?

Answer. I did run the lines of the surveys constituting the east side of the connexion represented by the plat A, from the white oak on the Spruce fork, the beginning of John Young's survey of 4,000 acres, and marked on the plat A. He says he run as far as the letter O on the line to the letter F on said plat. The marked trees on this line appeared old, and of the age of the marks on the white oak at the letter A, the beginning of John Young's survey of 4,000 acres.

Question by same. Did you trace the north boundary of said connexion, the line described in the plat by the letters A and C? if so, state what you discovered, what marked trees, and where situated, the ages of the marks?

Answer. I did run and trace the line of the north boundary of said connexion or chain of surveys, that is, the line from the letter A to C, as designated in the plat A. I run from the white oak, corner to John Young at the letter A on the plat, as far as the figure 6 on the line, to the letter C on said plat. He found the line marked, and appeared to be of the age of the surveys, that is, they appeared to be as old as the white oak, corner of John Young at the letter A.

Question by same. Did you trace the west boundary and the south boundary of said connexion of surveys? if so, answer the same inquiries that were propounded touching the north boundary.

Answer. I did not run any part of the western boundary line of the chain of surveys.

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Question by same. Did you run any of the lines in the interior of the connexion of surveys? if so, designate which and what you discovered on them.

Answer. I did run some of the lines in the interior of the connexion, and have stated such as I recollect in answer to the first and second interrogatories, except the lines of Thomas Laidley's 5,000 acres; I run a part of them.

JOHN HOYE.

UNITED STATES OF AMERICA, DISTRICT AND STATE OF VIRGINIA, sct.

I, Ephraim Dunn, a justice of the peace for Hampshire county, do hereby certify that the reason for taking the deposition hereunto annexed of John Hoye is, that the said witness, John Hoye, resides more than one hundred miles from Clarksburg, where the court is held in which said cause is depending; and I do further certify, that the said John Hoye is at this time very infirm, the result of disease. I do further certify, that I am not of counsel or attorney to either of the parties in the said deposition mentioned, nor interested in the event thereof; that the said deposition was reduced to writing by myself, and thereafter subscribed by the said deponent in my presence. In testimony whereof, I have hereunto set my hand and seal, this ninth day of May, one thousand eight hundred and twenty-seven, at the house of John Burbridges, in the State aforesaid.

EPHRAIM DUNN, [SEAL.]

(Deposition of Mary Henry, received May term, 1828.)

PEREGRINE PICKLE, Lessee of Reed and Ford and others, *versus* DANIEL STRINGER AND OTHERS. } *In the District Court of the United States for the Western District of Virginia. In ejectment.*

April 29th, 1828. Deposition of Mary Henry, aged sixty years or thereabouts, and living in the city of Philadelphia, in Fifth street, at a greater distance from the place of trial of the above cause than one hundred miles, taken in the above city, on behalf of the plaintiff, neither the defendant nor his attorney, nor the nearest of them, being within one hundred miles of the place of caption thereof, before Joseph Watson, Esquire, mayor of the said city, not being of counsel or attorney to either of the parties, or interested in the event of the cause.

Certified by the said Joseph Watson.

[L. S.]

JOSEPH WATSON,
Mayor of the City of Philadelphia.

The within named Mary Henry deposes and says, that she was well acquainted with Standish Ford, formerly of the city of Philadelphia; that he has been dead several years; that his issue were six children, all of whom are now living and of full age, to wit, two sons and four daughters, being named respectively as follows: Standish, John, Ellen, Margaret, Anne, and Mary; that Anne and Mary are single women, and have never been married; that Ellen is now the wife of William Hansel, and Margaret is now the wife of Benjamin P. Smith; that deponent knows of no other

matter or thing which may be material to either of the parties in the before mentioned cause.

MARY HENRY.

Affirmed and subscribed before me,
[L. S.] JOSEPH WATSON, *Mayor.*

City of Philadelphia, ss.—Before me, Joseph Watson, Esquire, mayor of the said city, personally came and appeared Mary Henry, the deponent n the annexed deposition, who, being first carefully examined and cautioned and affirmed to testify the whole truth, subscribed the annexed testimony by her given, the same having been reduced to writing by me in her presence.

Witness my hand and the seal of the said city, this 29th day of April, A. D. 1828.

[L. S.] JOSEPH WATSON,
Mayor of the City of Philadelphia.

(Deposition of John Hoye, received September term, 1828.)

The deposition of John Hoye, before me, Abraham Shriver, the undersigned, one of the associate judges of the fifth judicial district of Maryland, composed of the counties of Frederick, Washington, and Alleghany; and being, by virtue of my commission, one of the judges of the county court in and for each of the aforesaid several counties respectively, duly commissioned and sworn and acting as such; taken on this twenty-second day of July, in the year of our Lord eighteen hundred and twenty-eight, at my dwelling in Frederick, in Frederick county aforesaid, in the State aforesaid, to be read as evidence in a certain suit depending in the district court of the United States for the western district of Virginia, wherein the lessee of Reed, Ford, and of others is plaintiff, and Boardman and others are defendants. The said deponent, being first duly sworn and cautioned to depose the whole truth, doth depose and say, that he resides in the said county of Alleghany, in the State of Maryland aforesaid, and more than one hundred miles from the place of the trial of the above cause. Furthermore, in answer to the several interrogatories propounded on the part of the plaintiff, hereunto annexed, and successively numbered, "Question first," Question second," and so on in order to "Question sixteenth," inclusive, the said deponent makes the several and respective answers, as designated, and which said answers are hereunto annexed, next after the said interrogatories; and which said answers to the said interrogatories are wholly in the hand writing of the said John Hoye.

And I, the said Abraham Shriver, judge as aforesaid, duly commissioned and sworn and acting as aforesaid, do certify, that, at the request of the plaintiff, I caused the said deponent, John Hoye, to come before me, at the time and place stated in the caption, because the said witness resides more than one hundred miles from Clarksburg, in the county of in Virginia, the place of holding the said court of the United States; that I did not cause any notification to be given to the adverse parties of the time and place, so as to be present at the taking the same, because the said adverse parties did not reside within one hundred miles of the place of taking the same, and had no agent or attorney, known to me, within that distance

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of the place of caption. The said witness was by me carefully examined, cautioned and sworn, then and there to testify the whole truth. The said deposition was wholly reduced to writing by the said witness, and signed by him in my presence. That I am not of counsel or attorney to either of the parties, or interested in the event of the cause. All which I do certify to said court, as the cause and manner wherefore said deposition was taken.

ABM. SHRIVER.

LESSEE OF REED AND FORD AND OF OTHERS, *versus* BOARDMAN AND OTHERS. } *In the District Court of the United States for the W. D. of Virginia. In ejectment.*

Deposition of John Hoye, aged fifty years or thereabout, and living in the county of Alleghany, in the State of Maryland, at a greater distance from the place of trial of the above cause than one hundred miles. Taken in Frederick, in the county of Frederick, in the State of Maryland, on behalf of the plaintiff, neither the defendant nor his attorney, nor the nearest of them, being within one hundred miles of the place of caption thereof, before Abraham Shriver, one of the associate judges of the sixth judicial district of the State of Maryland, composed of Frederick, Washington, and Alleghany counties, and being by virtue of my commission one of the judges of the county court in and for each of said counties; not being of counsel or attorney to either of the parties, or interested in the event of the cause.

Certified by me, the said

ABM. SHRIVER.

Interrogatories propounded to John Hoye, on the part of the plaintiff.

Question first. Look on the plat and report now shewn to you, and hereunto annexed, signed Thomas Haymond, and marked on the back with the letter A, and state whether you ever had occasion to trace any of the lines of a connexion of surveys made for Thomas Laidley on French Creek, in what is now called Lewis county, and which surveys, or some of them, have been patented to John Young and to Reed and Ford; if so, can you recognise any of the lines you traced on this map, and which of them? Please to designate them.

Question second. Were you at any time at the corner marked A, on the Spruce Fork of Stone Coal Creek? if so, describe the kind of tree, how marked, and whose corner it was reputed to be. At what time did you first see it? who shewed it to you, and what was your object in going to it? Did you trace any lines from it? Whose lines, or the lines of what surveys did you trace from it?

Question third. Did you ever see a corner on Bull run, at or about the place designated on the plat by the letter I, on the line shaded red? if so, what kind of tree was it? how was it marked? was it standing and alive, or had it fallen? do you know of what survey it was a corner? was any other tree marked about the same place? if so, by whom and for what purpose?

Question fourth. Did you trace any of the lines of the survey designated on the plat by the red lines? if so, which of them? Did you observe any lines or corner trees, and where were they situated?

Question fifth. Did you run the lines, or any of them, constituting the east side of the connexion of surveys represented by the plat? if so, state which of them, and what you discovered. Did the marked trees appear an-

cient, and to correspond with the kind called for by the original surveys made for Laidley? and did the marks appear to correspond with the age of the surveys?

Question sixth. Did you trace the north boundary of said connexion, that is, the line described in the plat from the letters A to C? if so, state what you discovered; what marked trees, and where situated; the ages of the marks.

Question seventh. Did you trace the west boundary and the south boundary of said connexion of surveys? if so, answer the same inquiries that were propounded touching the north boundary.

Question eighth. Did you run any of the lines in the interior of the connexion of surveys? if so, designate which, and what you discovered on them.

Question ninth. Do you know Henry Jackson, formerly surveyor of Randolph county? if so, how long have you known him?

Question tenth. Did Henry Jackson ever shew you the beginning corner of John Young's survey of 4,000 acres of land, entered in Monongalia county, but now in Lewis county, and exhibited as lying in the northeast corner of the said connexion of surveys made by Thomas Haymond, now surveyor of Harrison county, marked with the letter A? if he did, then state when, and all such conversations as you may have had with the said Henry Jackson, concerning the said corner, or concerning the said survey, or the connexion of surveys of which it is one, with the time of such conversations, as nearly as you can. On what water did Henry Jackson say the beginning corner to which you allude stood?

Question eleventh. Did the said Henry Jackson ever tell you who had informed him where the beginning corner of John Young's said survey stood, or who had informed him thereof, or pointed the same out to him as such? if he did, then state who the person was from whom the said Henry Jackson stated that he had derived his knowledge, if you can?

Question twelfth. Have you at any time heard the said Henry Jackson express either his own doubts or belief that such corner was the true one?

Question thirteenth. Was you acquainted with the eastern and northern marked boundaries of the said connexion, particularly of the eastern boundary of John Young's 4,000 acres, and of 8,000 acres claimed by Reed and Forde, and of lands entered for Henry Banks, by George Jackson, lying between them, and all appearing on the said plat or connexion A? if so, then state whether the said northern and eastern boundaries were or were not generally known in the country, and more particularly by surveyors and land dealers, as the boundaries of John Young and of Reed and Forde, with the time of your knowledge.

Question fourteenth. Was John Jackson, whom you mention, acquainted with surveying or not? did his business lead him to a knowledge of the large surveys in that country or not? and how near to John Young's survey did he then live?

Question fifteenth. Where on the diagram or connexion A, to which you have referred, does the corner of John Young, which you call his beginning corner, stand? is it, or is it not, in the northeast angle of the said diagram or connexion, and of said Young's survey, as appearing thereon? if it is, then state what water course or stream the said corner, at the said northeast angle, stands on or near to?

Question sixteenth. Did you ever send a message to certain persons who

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were about to settle, or who had settled, upon part of the land contained in the plat before mentioned, marked A, informing those persons that the land belonged to Archibald McCall, and advising them not to improve the said land, as one day or other they would lose it? if aye, state when you sent such message, and by whom.

First answer. I had several times occasion to trace some of the lines of the connexion of surveys made for Thomas Laidley on Stone Coal and French Creeks, as laid down in the plat and report of Thomas Haymond, marked A, and hereunto annexed, and now shewn. I run several times from a white oak at the letter A, on the said plat now shewn, and which is on the Spruce fork of Stone Coal Creek, the beginning of John Young's survey of 4,000 acres, and shaded blue on the plat; from that bounded W. O. I run and found an ancient marked line on the north line of the chain of surveys, that is, from A to B, and on towards the letter in the same direction C, marked on said plat. I think I found old marks as far as I went on said line, and believe it was as far as the figure 6 on the said plat; and from the aforesaid bounded white oak at letter A, I run S. 3° E. with an ancient marked line of John Young's survey of 4,000 acres on the east side of the chain of surveys, I believe to the letter F, and then S. 3° E. 4 or 500 poles, and found a bounded maple, which I at first supposed to be the beginning of Reed and Forde's survey of 8,000 acres, shaded red on said plat marked A, signed by Thomas Haymond; but on a second examination I found it was not their corner, as I could not find any marked trees agreeing with the lines of their survey westwardly. I then examined in the S. 3° E. direction, and from the maple about 50 or 80 poles I found a bounded white oak, and I think two of them, and a bounded maple, which bounded maple was down and much decayed; but the marks of the chops were plain to be seen in the bark where it had been bounded. I found old marked line trees from these bounded trees to agree with the lines of Reed and Forde's survey of 8,000 acres, shaded red; this was near Bull run, and I believe it to be at the letter I, marked on the plat hereunto annexed, now shewn, marked A. I run the lines of Reed and Forde's survey from the corner on Bull run S. 10° E., and found an old marked line agreeing with the line of their survey of 8,000 acres. I believe I run to the letter O on the aforesaid plat marked A. I run from the S. E. corner of said Reed and Forde's survey of 8,000 acres, and I believe it to be at the letter O on said plat, S. 80° W., and found ancient marked trees on the line agreeing with the lines of the survey. I run from the corner near Bull run S. 80° W., and found a marked line for some distance, agreeing with the lines of Reed and Forde's survey of 8,000 acres; but from recollection I think the lines was badly marked, being some distance between the marked trees. When I run this line from the corner near Bull run, it was to find a survey of Thomas Laidley's, which laid to the westward of Reed and Forde's survey of 8,000 acres, and to examine the quality of it, as there was a proposition from Standish Ford to purchase it jointly.

To question two he answers: That twenty-odd years ago, and several times since, I was at the bounded white oak on the Spruce fork of Stone Coal Creek, which is at the letter A on the plat now shewn, and hereunto annexed, signed Thomas Haymond, and marked A. It was marked as a boundary to agree with John Young's survey of 4,000 acres, as laid down on the aforesaid plat, marked A and signed by Thomas Haymond, and the lines shaded blue. It was first shewn to me, I think, by Major John

Jackson, who resided on Buchanon, but is not positive whether he was the first who shewed the said white oak corner, but I am positive that said John Jackson told him or shewed him the corner as above stated, and informed me that it had been shewn to him by Fink, who made the chain of surveys, as the beginning corner of John Young's aforesaid survey of 4,000 acres. This deponent further saith, that he went to it with a view of running from it to find Reed and Forde's survey of 8,000 acres, and other surveys in that chain of surveys laid down in the plat now shewn and hereunto annexed, marked A, and signed by Thomas Haymond. I stated in answer to the first interrogatory what lines I did run; I did run some other of the divisional lines in said plat, but do not now recollect which, as I did not mark them on the plat I had.

To question third he answers: I was at a corner near Bull run, as stated in my answer to the first interrogatory, and I believe it was at the place designated on the plat by letter I, at the corner of a survey of Reed and Forde's of 8,000 acres, shaded red; I think there was two bounded white oak trees, but is not positive whether it was one or two white oaks. I found at the same place, near the white oaks which were standing, a bounded maple, which was down and much decayed, but the chops were then quite plain to be seen in the bark. I believe it to be the corner of the survey of 8,000 acres, shewn on the plat A by red lines, as the marked trees on the lines agreed with the lines of said survey of Reed and Forde of 8,000 acres, and the marked trees appeared to be old. I do not know who marked them, but supposed they were marked by Fink, who surveyed the chain of surveys, as the marks appeared to be as old as the white oak corner which he, Fink, shewed to John Jackson on the Spruce fork, the beginning of John Young's survey; and the marked trees on the line from that white oak to the corner on Bull run of Reed and Forde's survey, at the letter I on the plat marked A, all corresponding, bound me to believe it was the corner marked by Fink for said survey of 8,000 acres.

To question fourth he answers: I have answered this in the first and second interrogatory.

To question fifth he answers: I did run the lines of the survey constituting the east side of the connexion represented by the plat A, from the white oak on the Spruce fork, the beginning of John Young's survey of 4,000 acres, and marked on the plat A. I run as far as the letter O on the line to letter I on said plat; the marked trees on this line appeared as old as the age of the marks on the white oak at the letter A, the beginning of John Young's survey of 4,000 acres.

To question sixth he answers: I did run and trace lines of the north boundary of said connexion or chain of surveys, that is, the line from the letter A to C, as designated on the plat A; I run from the white oak corner of John Young's at the letter A on the plat, as far as the figure 6 on the line to the letter C on said plat; I found the line marked and appeared to be of the age of the survey, that is, they appeared to be as old as the white oak corner of John Young's at the letter A.

To question seventh he answers: I did not run any part of the western boundary lines of the chain of surveys.

To question eighth he answers: I did run some of the lines in the interior of the chain or connexion, and have stated them as recollected in the answer to the first and second interrogatories, except the lines of Thomas Laidley's 5,000 acres. I run a part of them.

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To question ninth he answers: I know Henry Jackson, former surveyor of Randolph county, Virginia; I knew him first about the year 1800, or probably a little before that period, which was before he was appointed surveyor of Randolph county. Mr. Philip Doddridge knows him, from a circumstance that took place at Morgantown.

To question tenth he answers. I do not recollect that Henry Jackson ever shewed me the beginning corner of John Young's survey of 4,000 acres of land, entered in Monongalia county, and now in Lewis county, and exhibited as laying on the northeast corner of the said connexion of surveys, made by Thomas Haymond, and hereunto annexed, marked A. I had several conversations with Henry Jackson respecting the corners and beginning of that chain of surveys, and said Henry Jackson always spoke of the white oak corner on the Spruce fork of Stone Coal Creek, and marked on the said plat with the letter A, as John Young's corner of 4,000 acres, and as being the beginning of said survey, or the place where Henry Fink commenced surveying when he laid off that chain of surveys, which gave rise to the opinion that it was the beginning corner. It was about the year 1802 or 1803, I think, I had conversations with Henry Jackson respecting the corners and beginning of that chain of surveys, and said Henry Jackson always spoke of the white oak corner on the Spruce fork of Stone Coal Creek, and marked on the said plat with the letter A, as John Young's corner of 4,000 acres, and as being the beginning of said surveys, or the place where Henry Fink commenced surveying when he laid off that chain of surveys, which gave rise to the opinion that it was the beginning corner.

To question eleventh he answers: I am not certain whether Henry Jackson said he had obtained his information from Henry Fink, or from John Jackson his brother, as to the corner of John Young's survey and the chain of surveys; but it was from one or the other of them.

To question twelfth he answers: I never heard Henry Jackson express any doubts on the subject of John Young's corner of 4,000 acres survey on the Spruce fork of Stone Coal, but that he spoke of it at all times as the true corner of John Young's survey.

To question thirteenth he answers: I was acquainted with the north and east boundaries of John Young's and Reed and Forde's surveys, as laid down on the plat; that the corner A was generally known as John Young's corner by surveyors and others, and was supposed to be his beginning corner from the circumstance of Fink's beginning to survey at that place or corner. The lines from this corner were generally known by surveyors and others at that time as the lines of the chain of surveys made by Fink for Laidley, Reed, Forde, Young, and others.

To question fourteenth he answers: John Jackson was acquainted with surveying; he was in the habit of surveying and shewing corners and conducting surveys, and thereby had a considerable knowledge of the lines and corner trees of surveys; I was at one time compelled to pay him $100 to shew a corner of a large survey. John Jackson resided about three miles from the survey of 4,000 acres of John Young.

To question fifteenth he answers: The white oak corner of John Young's survey is on the Spruce fork of Stone Coal, and is marked on the plat or connexion of surveys A. It is at the northeast corner of John Young's aforesaid survey of 4,000 acres, as marked on said plat, and was supposed and always said to be the beginning of said survey. I believe it was called the beginning corner, from the circumstance of Henry Fink's having begun his

chain of surveys there, as John Jackson said he begun there; and said John Jackson was with Fink during a part of the time when he made the chain of surveys, as Jackson stated to me.

To question sixteenth he answers: That at the time the Messrs. Gould and others were settling on French Creek on the 8,000 acres tract, patented to Reed and Ford, I did send them word that the lands belonged to Archibald McCall, and advised them not to improve on it, as they would one day or other lose the land. I think I sent this message by Thomas Carney, but am not positive.

JOHN HOYE.

Before me, Abraham Shriver, one of the associate judges of the fifth judicial district of the State of Maryland, composed of Frederick, Washington and Alleghany counties, and by virtue of my commission one of the judges of the county court in and for each of said several counties respectively, personally came and appeared John Hoye, the deponent in the annexed deposition named, who being first carefully examined and cautioned and sworn to testify the whole truth, subscribed the annexed testimony, by him given, the same having been wholly reduced to writing by himself, and signed by him in my presence.

Witness my hand and seal, the 22d day of July, A. D. 1828.

ABM. SHRIVER.

(Copy of a deed from John Reed and others to Archibald McCall, filed among the papers in this cause.)

This indenture, made the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and six, between John Reed, merchant, and Rachel his wife, and Standish Forde, merchant, and Sarah his wife, of the city of Philadelphia, of the one part, and Archibald McCall, of the city of Philadelphia, merchant, of the other part. Whereas the said John Reed and Standish Forde did, by agreement dated the twenty-fourth day of July, one thousand seven hundred and ninety-four, contract to sell and convey to Archibald McCall, deceased, the said Archibald McCall party hereto, George McCall and George Taylor, and to their and each of their heirs and assigns for ever, five sixth parts of all the lands they, the said Reed and Ford, or either of them, then held or owned in the counties of Mohongalia, Harrison, and Randolph, in the State of Virginia, which should be found, on examination, to be of a certain quality, and clear of all incumbrances and disputes, (except certain lands near and adjoining the falls of Tyger Valley River, in the said State.) And whereas the said Reed and Forde, in order to comply with the above mentioned agreement, did, by deed dated the third day of June, one thousand seven hundred and ninety-five, recorded in the district court for Monongalia county, May term, one thousand seven hundred and ninety-seven, convey to said Archibald McCall, deceased, Archibald McCall party hereto, George McCall and George Taylor, and to their and each of their heirs and assigns for ever, five sixth parts of the said lands, and did cause conveyances of other parts of the said lands to be made to the said Archibald McCall, deceased, Archibald McCall party hereto, George McCall and George Taylor, by different persons, viz: by William Tilton, by deed dated the eleventh day of February, one thousand seven hundred and ninety-six, recorded in the

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district court for Monongalia county, May term, one thousand seven hundred and ninety-seven, and by Robert Ralston, of the city of Philadelphia, merchant, assignee of the said William Tilton, by deed dated the fifteenth day of February, one thousand seven hundred and ninety-six, recorded in the district court for Monongalia county, May term, one thousand seven hundred and ninety-seven, and by the said Standish Forde, by deed dated the twentieth day of January, one thousand seven hundred and ninety-seven; and of other parts to Archibald McCall, party hereto, his heirs and assigns, by John Young, by deed dated the twenty-fourth day of April, one thousand eight hundred and two, recorded in the district court for Monongalia county, November term, one thousand eight hundred and three. And whereas the said Reed and Forde, and the said Archibald McCall, deceased, Archibald McCall party hereto, George McCall and George Taylor, with a view of finally carrying the above mentioned agreement into effect, and closing as speedily as possible all concerns in relation to the same, did enter into other articles of agreement, dated the sixteenth day of June, one thousand seven hundred and ninety-seven, by which articles of agreement the said Reed and Forde did bind themselves, under a heavy penalty, to convey to the said Archibald McCall, deceased, Archibald McCall party hereto, George McCall and George Taylor, their and each of their heirs and assigns for ever, one hundred and five thousand five hundred acres of the said, in lieu of the five sixth parts of the whole body covenanted to be conveyed as aforesaid—the said one hundred and five thousand five hundred acres to be, by the said Archibald McCall, deceased, Archibald McCall party hereto, George McCall and George Taylor, selected from the whole body, in manner as mentioned in the first agreement, without any recourse to be had to the said Reed and Forde or their heirs, for any deficiency in the title or quality of the whole or any part of the said one hundred and and five thousand five hundred acres, an allowance having been made by the said Reed and Forde for any deficiency there might be.

And whereas the said Archibald McCall, deceased, Archibald McCall party hereto, George McCall and George Taylor, by the said articles of agreement, dated the sixteenth day of June, one thousand seven hundred and ninety-seven as aforesaid, consented and engaged to take and receive the said one hundred and five thousand five hundred acres, to be selected according to the said agreement as before mentioned. And whereas the said Archibald McCall, deceased, Archibald McCall party hereto, George McCall, and George Taylor, according to the terms of the said agreement, did select the herein after described body of lands from the whole body aforesaid. And whereas the said Archibald McCall died intestate, leaving twelve surviving children and two grand-children, the sons of his deceased son George. And whereas, the said George McCall died intestate, leaving two afore mentioned children, the grand-children of the said Archibald McCall, deceased. And whereas the said George Taylor, by deed dated the fifteenth day of December, one thousand eight hundred and three, did release and convey to Archibald McCall, party hereto, and to his heirs and assigns for ever, all his estate, right, title, and interest, of, in, and to his share or proportion of the said lands. And whereas the said Reed and Forde are desirous to close the business, and to comply with and fulfil their engagements, and to convey all their estate, right, title, and interest, of, in, and to the herein after described body of lands, in conformity to the said contracts, and agreeably to the respective rights and interests under the same. Now this in-

denture witnesseth, that the said John Reed, and Rachel his wife, and Standish Ford, and Sarah his wife, as well for and in consideration of the sum of twenty thousand dollars, to them in hand heretofore paid by the said Archibald McCall, deceased, Archibald McCall party hereto, George McCall and George Taylor, the receipt whereof is hereby acknowledged, and has been so heretofore, as of the agreements and engagements aforesaid, and of the further sum of one dollar to them now in hand paid by the said Archibald McCall party hereto, the receipt whereof is now hereby acknowledged, have granted, bargained and sold, aliened, enfeoffed, released and confirmed, and by these presents do grant, bargain and sell, alien, enfeoff, release and confirm unto the said Archibald McCall party hereto, and to his heirs and assigns, all those forty-seven tracts or pieces of land, situate, lying, and being, now or late, in the counties of Monongalia and Harrison, in the commonwealth of Virginia, containing in the whole one hundred and five thousand nine hundred and five acres, bounded and described agreeably to the courses and distances contained in the forty-seven several patents herein after mentioned, that is to say: One of them containing two thousand acres, situate on Hughs's run, adjoining and above Thomas Laidley's second entry, granted to him, the said Thomas Laidley, in fee, by a patent, No. 3, from the said commonwealth, dated the sixteenth day of May, one thousand seven hundred and eighty-six, in consideration of a land office treasury warrant, No. 19,555, issued the twenty-second day of September, 1783. One other of them, containing two thousand acres, adjoining and above lands of Daniel Fink, on Jesse Hughs's run, waters of the west fork, granted to the said Thomas Laidley in fee by a patent, No. 1, from the said commonwealth, dated the nineteenth day of May, one thousand seven hundred and eighty-six, in consideration of a land office treasury warrant, No. 19,556, issued the twenty-second day of September, 1783. Another of them, containing also two thousand acres, situate on Hughs's run, adjoining and above his first entry, granted to the said Thomas Laidley in fee by another patent, No. 2, from the said commonwealth, dated also the nineteenth day of May, one thousand seven hundred and eighty-six, in consideration of a land office treasury warrant, No. 19,557, issued the twenty-second day of September, 1783. Another of them, containing four thousand acres, adjoining on the south of land entered by George Jackson for Henry Banks, on his second entry on French Creek, granted to the said Thomas Laidley in fee by another patent, No. 8, from the said commonwealth, dated also the nineteenth day of May, one thousand seven hundred and eighty-six, in consideration of part of a land office treasury warrant, No. 18,699, issued the fourteenth day of August, 1783. Another of them, containing six thousand acres, adjoining land entered for Henry Banks by George Jackson on the east side of the said entry, granted to the said Thomas Laidley in fee by another patent, No. 9, from the said commonwealth, dated also the nineteenth day of May, one thousand seven hundred and eighty-six, in consideration of part of a land office treasury warrant, No. 18,699, issued the fourteenth day of August, 1783. Another of them, containing five thousand acres, situate on the Slab Camp fork of French Creek, adjoining lands of Daniel Fink and extending up said fork, granted to the said Thomas Laidley in fee by another patent from the said commonwealth, dated also the nineteenth day of May, one thousand seven hundred and eighty-six, in consideration of a land office treasury warrant, No. 19,587, issued the twenty-sixth day of September, 1783. Another of

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them, containing ten thousand acres, situate on the east side of the Little Kenawha river, granted to the said Standish Forde in fee by another patent, No. 1, from the said commonwealth, dated the fourth day of August, one thousand seven hundred and eighty-five, in consideration of a land office treasury warrant, No. 17,902, issued the twenty-first day of July, 1783. Another of them, one thousand four hundred acres, situate on the waters of Osborn's creek, adjoining lands of Bartholomew Jenkins and others, granted to the said Standish Forde in fee by another patent from the said commonwealth, dated the sixth day of June, one thousand seven hundred and eighty six, recorded in book No. 34, page 307, in consideration of two land office treasury warrants, No. 2,292, issued the sixteenth day of October, 1782, and No. 19,249, issued the eleventh day of September, 1783. Another of them, containing one thousand acres, situate on the south of his other survey on drains of White Day, granted to the said Standish Forde in fee by another patent, No. 4, from the said commonwealth, dated the thirtieth day of October, one thousand seven hundred and eighty seven, in consideration of a land office treasury warrant, No. 20,131, issued the twenty-first day of October, 1783. Another of them, containing one thousand three hundred and seventy acres, adjoining lands surveyed for said Laidley and Robert Peters on drains of Three Fork creek and White Day, granted to the said Standish Forde in fee by another patent, No. 8, from the said commonwealth, dated also the thirtieth day of October, one thousand seven hundred and eighty-seven, in consideration of part of a land office treasury warrant, No. 15,[illegible]5, issued the seventh day of April, 1783. Another of them, containing five thousand acres, situate on the waters of Little Pawpaw, and the waters of Dunker creek, granted to the said Standish Forde in fee by another patent, No. 9, from the said commonwealth, dated also the thirtieth day of October, one thousand seven hundred and eighty-seven, in consideration of a land office treasury warrant, No. 19,742, issued the seventh day of October, 1783. Another of them, containing one thousand acres, situate on Hellin's run, adjoining Charles Martin and William Robinson, granted to the said Standish Forde in fee by another patent, No. 11, from the said commonwealth, dated also the thirtieth day of October, one thousand seven hundred and eighty seven, in consideration of a land office treasury warrant, No. 17,369, issued the twenty-sixth day of June, 1783. Another of them, containing one thousand acres, adjoining his last entry, to include the heads of the right hand fork of Booth's creek, granted to the said Standish Forde in fee by another patent, No. 3, from the said commonwealth, dated also the thirtieth day of October, one thousand seven hundred and eighty-seven, in consideration of a preemption treasury warrant, No. 2,249, issued the fifth day of October, 1782. Another of them, containing also one thousand acres, adjoining his last entry on Hellin's run, granted to the said Standish Forde in fee by another patent, No. 12, from the said commonwealth, dated also the thirtieth day of October, one thousand seven hundred and eighty-seven, in consideration of a land office treasury warrant, No. 17,375, issued the twenty-sixth day of June, 1783. Another of them, containing four thousand acres, situate on the right hand fork of Booth's creek, adjoining lands of the heirs of John Brain and lands of Henry Banks, extending to waters of Three Fork creek, granted to the said Standish Forde in fee by another patent, No. 1, from the said commonwealth, dated the thirty-first day of October, one thousand seven hundred and eighty-seven, in consideration of a land office treasury

denture witnesseth, that the said John Reed, and Rachel his wife, and Standish Ford, and Sarah his wife, as well for and in consideration of the sum of twenty thousand dollars, to them in hand heretofore paid by the said Archibald McCall, deceased, Archibald McCall party hereto, George McCall and George Taylor, the receipt whereof is hereby acknowledged, and has been so heretofore, as of the agreements and engagements aforesaid, and of the further sum of one dollar to them now in hand paid by the said Archibald McCall party hereto, the receipt whereof is now hereby acknowledged, have granted, bargained and sold, alienated, enfeoffed, released and confirmed, and by these presents do grant, bargain and sell, alien, enfeoff, release and confirm unto the said Archibald McCall party hereto, and to his heirs and assigns, all those forty-seven tracts or pieces of land, situate, lying, and being, now or late, in the counties of Monongalia and Harrison, in the commonwealth of Virginia, containing in the whole one hundred and five thousand nine hundred and five acres, bounded and described agreeably to the courses and distances contained in the forty-seven several patents herein after mentioned, that is to say: One of them containing two thousand acres, situate on Hughs's run, adjoining and above Thomas Laidley's second entry, granted to him, the said Thomas Laidley, in fee, by a patent, No. 3, from the said commonwealth, dated the sixteenth day of May, one thousand seven hundred and eighty-six, in consideration of a land office treasury warrant, No. 19,555, issued the twenty-second day of September, 1783. One other of them, containing two thousand acres, adjoining and above lands of Daniel Fink, on Jesse Hughs's run, waters of the west fork, granted to the said Thomas Laidley in fee by a patent, No. 1, from the said commonwealth, dated the nineteenth day of May, one thousand seven hundred and eighty-six, in consideration of a land office treasury warrant, No. 19,556, issued the twenty-second day of September, 1783. Another of them, containing also two thousand acres, situate on Hughs's run, adjoining and above his first entry, granted to the said Thomas Laidley in fee by another patent, No. 2, from the said commonwealth, dated also the nineteenth day of May, one thousand seven hundred and eighty-six, in consideration of a land office treasury warrant, No. 19,557, issued the twenty-second day of September, 1783. Another of them, containing four thousand acres, adjoining on the south of land entered by George Jackson for Henry Banks, on his second entry on French Creek, granted to the said Thomas Laidley in fee by another patent, No. 8, from the said commonwealth, dated also the nineteenth day of May, one thousand seven hundred and eighty-six, in consideration of part of a land office treasury warrant, No. 18,699, issued the fourteenth day of August, 1783. Another of them, containing six thousand acres, adjoining land entered for Henry Banks by George Jackson on the east side of the said entry, granted to the said Thomas Laidley in fee by another patent, No. 9, from the said commonwealth, dated also the nineteenth day of May, one thousand seven hundred and eighty-six, in consideration of part of a land office treasury warrant, No. 18,699, issued the fourteenth day of August, 1783. Another of them, containing five thousand acres, situate on the Slab Camp fork of French Creek, adjoining lands of Daniel Fink and extending up said fork, granted to the said Thomas Laidley in fee by another patent from the said commonwealth, dated also the nineteenth day of May, one thousand seven hundred and eighty-six, in consideration of a land office treasury warrant, No. 19,587, issued the twenty-sixth day of September, 1783. Another of

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them, containing ten thousand acres, situate on the east side of the Little Kenawha river, granted to the said Standish Forde in fee by another patent, No. 1, from the said commonwealth, dated the fourth day of August, one thousand seven hundred and eighty-five, in consideration of a land office treasury warrant, No. 17,902, issued the twenty-first day of July, 1783. Another of them, one thousand four hundred acres, situate on the waters of Osborn's creek, adjoining lands of Bartholomew Jenkins and others, granted to the said Standish Forde in fee by another patent from the said commonwealth, dated the sixth day of June, one thousand seven hundred and eighty six, recorded in book No. 34, page 307, in consideration of two land office treasury warrants, No. 2,292, issued the sixteenth day of October, 1782, and No. 19,249, issued the eleventh day of September, 1783. Another of them, containing one thousand acres, situate on the south of his other survey on drains of White Day, granted to the said Standish Forde in fee by another patent, No. 4, from the said commonwealth, dated the thirtieth day of October, one thousand seven hundred and eighty seven, in consideration of a land office treasury warrant, No. 20,131, issued the twenty-first day of October, 1783. Another of them, containing one thousand three hundred and seventy acres, adjoining lands surveyed for said Laidley and Robert Peters on drains of Three Fork creek and White Day, granted to the said Standish Forde in fee by another patent, No. 8, from the said commonwealth, dated also the thirtieth day of October, one thousand seven hundred and eighty-seven, in consideration of part of a land office treasury warrant, No. 15,[illegible]5, issued the seventh day of April, 1783. Another of them, containing five thousand acres, situate on the waters of Little Pawpaw, and the waters of Dunker creek, granted to the said Standish Forde in fee by another patent, No. 9, from the said commonwealth, dated also the thirtieth day of October, one thousand seven hundred and eighty-seven, in consideration of a land office treasury warrant, No. 19,742, issued the seventh day of October, 1783. Another of them, containing one thousand acres, situate on Hellin's run, adjoining Charles Martin and William Robinson, granted to the said Standish Forde in fee by another patent, No. 11, from the said commonwealth, dated also the thirtieth day of October, one thousand seven hundred and eighty seven, in consideration of a land office treasury warrant, No. 17,369, issued the twenty-sixth day of June, 1783. Another of them, containing one thousand acres, adjoining his last entry, to include the heads of the right hand fork of Booth's creek, granted to the said Standish Forde in fee by another patent, No. 3, from the said commonwealth, dated also the thirtieth day of October, one thousand seven hundred and eighty-seven, in consideration of a preemption treasury warrant, No. 2,249, issued the fifth day of October, 1782. Another of them, containing also one thousand acres, adjoining his last entry on Hellin's run, granted to the said Standish Forde in fee by another patent, No. 12, from the said commonwealth, dated also the thirtieth day of October, one thousand seven hundred and eighty-seven, in consideration of a land office treasury warrant, No. 17,375, issued the twenty-sixth day of June, 1783. Another of them, containing four thousand acres, situate on the right hand fork of Booth's creek, adjoining lands of the heirs of John Brain and lands of Henry Banks, extending to waters of Three Fork creek, granted to the said Standish Forde in fee by another patent, No. 1, from the said commonwealth, dated the thirty-first day of October, one thousand seven hundred and eighty-seven, in consideration of a land office treasury

warrant, No. 17,690, issued the tenth day of July, 1783. Another of them, containing two hundred and sixty-two acres, situate on the south side of his last entry, granted to the said Standish Forde in fee by another patent, No. 5, from the said commonwealth, dated the thirty-first day of October, one thousand seven hundred and eighty-seven, in consideration of part of a land office treasury warrant, No. 20,135, issued the twenty-first day of October, 1783 Another of them, containing one thousand acres, adjoining David Gray's first entry, on the waters of Big Sandy creek, and lands of John Allison and William Davis, granted to the said Standish Forde in fee by another patent, No. 2, from the said commonwealth, dated the twenty-fourth day of November, one thousand seven hundred and eighty-seven, in consideration of an exchanged pre-emption treasury warrant, No. 347, issued the seventeenth day of February, 1783. Another of them, containing also one thousand acres, situate on a drain of Big Sandy creek, adjoining lands of Benjamin Harrison and lands of John Allison, granted to the said Standish Forde in fee by another patent, No. 1, from the said commonwealth, dated the twenty-fourth day of November, one thousand seven hundred and eighty-seven, in consideration of an exchanged pre-emption treasury warrant, 350, issued the fifteenth day of February, 1783. Another of them, containing four thousand acres, adjoining William Tilton's eighth entry on the east side, and granted to the said William Tilton in fee by a patent, No. 10, from the said commonwealth, dated the fourth day of August, one thousand seven hundred and eighty-five, in consideration of a land office treasury warrant, No. 17,866, issued the twenty-first day of July, 1783. Another of them, containing one thousand acres, adjoining and above the last entry on Walker's creek, and extending up both sides of the said creek, granted to the said William Tilton in fee by another patent, No. 79, from the said commonwealth, dated also the fourth day of August, one thousand seven hundred and eighty-five, in consideration of part of a land office treasury warrant, No. 17,843, issued the twenty-first day of July, 1783. Another of them, containing also one thousand acres, situate on both sides of Walker's creek, about one mile above the mouth, extending upwards, granted to the said William Tilton in fee by another patent, No. 80, from the said commonwealth, dated also the fourth day of August, one thousand seven hundred and eighty-five, in consideration of part of a land office treasury warrant, No. 17,843, issued the twenty-first day of July, 1783. Another of them, containing four thousand five hundred acres, adjoining on the river, granted to the said William Tilton in fee by another patent, No. 30, from the said commonwealth, dated also the fourth day of August, one thousand seven hundred and eighty-five, in consideration of part of a land office treasury warrant, No. 17,901, issued the twenty-first day of July, 1783. Another of them, containing five thousand acres, adjoining his fifth entry, below it, granted to the said William Tilton in fee by another patent, No. 31, from the said commonwealth, dated also the fourth day of August, one thousand seven hundred and eighty-five, in consideration of part of a land office treasury warrant, No. 17,901, issued the twenty-first day of July, 1783. Another of them, containing four thousand acres, adjoining his fifty-second entry on the south, granted to the said William Tilton in fee by another patent, No. 53, from the said commonwealth, dated also the fourth day of August, one thousand seven hundred and eighty-five, in consideration of a land office treasury warrant, No. 17,892, issued the twenty-first day of July, 1783. Another of them, containing three

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thousand nine hundred and thirty-seven acres, situate on the east side of the Little Kenawha, adjoining and above his seventy-first entry, granted to the said William Tilton in fee by another patent, No. 72, from the said commonwealth, dated also the fourth day of August, one thousand seven hundred and eighty-five, in consideration of part of a land office treasury warrant, No. 17,864, issued the twenty-first day of July, one thousand seven hundred and eighty-three. Another of them, containing four thousand acres, adjoining John Reed's eighth entry on the south, granted to the said John Reed in fee by a patent, No. 9, from the said commonwealth, dated the fourth day of August, one thousand seven hundred and eighty-five, in consideration of a land office treasury warrant, No. 17,868, issued the twenty-first day of July, 1783. Another of them, containing four thousand acres, adjoining his fifty-third entry on the south, granted to the said John Reed in fee by another patent, No. 54, from the said commonwealth, dated also the fourth day of August, one thousand seven hundred and eighty-five, in consideration of a land office treasury warrant, No. 17,855, issued the twenty-first day of July, 1783. Another of them, containing one thousand two hundred acres, situate on the waters of Gregory and Lambert's runs, adjoining lands claimed by the heirs of Amaziah Davison and Thomas Read, granted to the said John Reed in fee by another patent, No. 37, from the said commonwealth, dated the seventeenth day of January, one thousand seven hundred and eighty-seven, in consideration of part of a land office treasury warrant, No. 16,011, issued the eighth day of May, 1783. Another of them, containing eight thousand acres, situate near a large branch of French creek, adjoining lands of George Jackson on the south side, granted to the said Reed and Forde in fee by a patent from the said commonwealth, dated the nineteenth day of May, one thousand seven hundred and eighty-six, in consideration of a land office treasury warrant, No. 15,633, issued the eighth day of May, 1783. Another of them, containing two thousand acres, adjoining and above land of said Reed and Forde on French creek, granted to the said Reed and Forde in fee by another patent, No 11, from the said commonwealth, dated also the nineteenth day of May, one thousand seven hundred and eighty-six, in consideration of part of a land office treasury warrant, No. 15,633, issued the eight day of May, 1783. Another of them, containing four thousand acres, situate on the Glady Fork of Stone Coal creek, granted to John Young in fee by a patent, No. 2, from the said commonwealth, dated the tenth day of June, one thousand seven hundred and eighty-six, in consideration of part of a land office treasury warrant, No. 17,719, issued the twelfth day of July, 1783. Another of them, containing four thousand and forty-two acres, adjoining land of Philip Lewis and Rudolph Snither, on waters of Dunker creek and Scott's mill run, granted to Samuel Hanway and Standish Forde in fee by a patent, No. 7, from the said commonwealth, dated the tenth day of September, one thousand seven hundred and ninety-two, in consideration of part of a land office treasury warrant, No. 20,433, issued the tenth day of November, 1783. Another of them, containing two hundred and eighty-four acres, situate on the waters of Dunker creek, granted to the said Samuel Hanway and Standish Forde in fee by another patent, No. 2, from the said commonwealth, dated the eleventh day of September, one thousand seven hundred and ninety-two, in consideration of part of a land office treasury warrant, No. 20,420, issued the tenth day of November, 1783. Another of them, containing two hundred and ten acres, situate on Indian creek,

granted to the said Samuel Hanway and Standish Ford in fee by another patent, No. 8, from the said commonwealth, dated also the eleventh day of September, one thousand seven hundred and ninety-two, in consideration of two land office treasury warrants, No. 20,420 and 20,433, issued the tenth day of November, 1783. Another of them, containing five hundred acres, adjoining and between lands of Rudolph Snither and David Piles, on waters of Hurst's run, granted to the said Samuel Hanway and Standish Forde in fee by another patent, No. 10, from the said commonwealth, dated the twelfth day of September, one thousand seven hundred and ninety-two, in consideration of a land office treasury warrant, No. 20,374, issued the tenth day of November, 1783. Another of them, containing five hundred acres, adjoining lands of Rudolph Snither and Michael Koar, on waters of Dols run, granted to the said Samuel Hanway and Standish Forde in fee by another patent, No. 14, from the said commonwealth, dated also the twelfth day of September, one thousand seven hundred and ninety-two, in consideration of a land office treasury warrant, No. 20,399, issued the tenth day of November, 1783. Another of them, containing five hundred acres, adjoining their third entry on waters of Dunker creek, granted to the said Samuel Hanway and Standish Forde in fee by another patent, No. 4, from the said commonwealth, dated the thirteenth day of September, one thousand seven hundred and ninety two, in consideration of a land office treasury warrant, No. 20,428, issued the tenth day of November, 1783. Another of them, containing five hundred acres, adjoining lands of John Baldwin and George Snither, on waters of Dunker creek, granted to the said Samuel Hanway and Standish Forde in fee by another patent, No. 5, from the said commonwealth, dated also the thirteenth day of September, one thousand seven hundred and ninety-two, in consideration of a land office treasury warrant, No. 20,511, dated the tenth day of November, 1783. Another of them, containing one thousand acres, situate on the Warrior's fork of Oil creek, granted to the said Standish Forde in fee by another patent, No. 26, from the said commonwealth, dated the first day of September, one thousand seven hundred and ninety-two, in consideration of a land office treasury warrant, No. 20,597, issued the tenth day of November, 1783. Another of them, containing one thousand acres, situate on Cloverlick fork of Oil creek, granted to the said Standish Forde in fee by another patent, No. 27, from the said commonwealth, dated also the first day of September, one thousand seven hundred and ninety-two, in consideration of a land office treasury warrant, No. 20,596, issued the tenth day of November, 1783. Another of them, containing also one thousand acres, situate on the waters of the Sand fork of Kenawha, granted to the said Standish Forde in fee by another patent, No. 13, from the said commonwealth, dated the fifth day of September, one thousand seven hundred and ninety-two, in consideration of two land office treasury warrants, No. 20,359 and 20,360, dated the tenth day of November, 1783. Another of them, containing also one thousand acres, situate on the waters of the Sand fork of Kenawha, granted to the said Standish Forde in fee by another patent, No. 21, from the said commonwealth, dated also the fifth day of September, one thousand seven hundred and ninety-two, in consideration of a land office treasury warrant, No. 20,618, issued the tenth day of November, 1783. Another of them, containing one thousand acres, situate on the waters of the Sand fork of Kenawha, granted to the said Standish Forde in fee by another patent, No. 22, from the said commonwealth, dated also the fifth day of September, one

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thousand seven hundred and ninety-two, in consideration of a land office treasury warrant, No. 20,612, issued the tenth day of November, 1783. Another of them, containing one thousand acres, situate on the dividing ridge between the West fork and Little Kenawha river, adjoining above a survey made for Richard Mason on Rush run, a branch of the said fork, granted to the said Standish Forde in fee by another patent, No. 1, from the said commonwealth, dated the sixth day of September, one thousand seven hundred and ninety-two, in consideration of two land office treasury warrants, No. 20,363 and No. 20,438, issued the tenth day of November, 1783. Another of them, containing one thousand acres, situate on the waters of the Sand fork of Kenawha, granted to the said Standish Forde in fee by another patent, No. 12, from the said commonwealth, dated also the sixth day of September, one thousand seven hundred and ninety-two, in consideration of two land office treasury warrants, No. 20,362 and No. 20,370, issued the tenth day of November, 1783. Another of them, containing also one thousand acres, situate on the dividing ridge between the West fork and Little Kenawha, granted to the said Standish Forde in fee by another patent, No. 3, from the said commonwealth, dated also the sixth day of September, one thousand seven hundred and ninety-two, in consideration of two land office treasury warrants, No. 20,480 and No. 20,483, issued the tenth day of November, 1783. Another of them, containing three hundred acres, situate on the waters , granted to the said Standish Forde in fee by another patent from the said commonwealth, dated the , in consideration of

Together with all and singular the ways, woods, waters, water courses, rights, liberties, privileges, and hereditaments whatsoever, thereunto respectively belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever, of them, the said John Reed, and Rachel his wife, and Standish Forde, and Sarah his wife, respectively, in law, equity, or otherwise howsoever, of, in, and to the same. To have and to hold the said described tracts or parcels of land, hereditaments, and premises hereby granted, or mentioned, or intended so to be, with the respective appurtenances, unto the said Archibald McCall party hereto, his heirs and assigns, to and for the following uses, and to and for no other use or uses whatsoever, viz: As for and concerning three full, equal, and undivided fifth parts thereof, the whole into five full, equal parts to be divided, to the use of himself, the said Archibald McCall, party hereto, his heirs and assigns for ever; and as for and concerning one other like undivided fifth part thereof, that is to say, twelve full, equal, and undivided thirteenth parts thereof, the said fifth part into thirteen equal parts to be divided, to the use of the said Archibald McCall party hereto, Mary Cadwallader, Ann Reed, Peter McCall, Margaret A. McCall, Samuel McCall, Harriet McCall, Richard McCall, William McCall, Catharine McCall, Robert McCall, and Henry McCall, twelve of the children of the said Archibald McCall, deceased, their heirs and assigns for ever, in equal parts and shares, as tenants in common, and not as joint tenants; and the remaining thirteenth part of the said fifth part to the use of George Clymer McCall and William Coleman McCall, grandchildren of the said Archibald McCall, deceased, and children of the said George McCall, deceased, their heirs and assigns for ever, in equal shares, as tenants in common, and not as joint tenants; and as for and concerning the remaining one like full, equal, and

undivided fifth part thereof, to and for the only proper use and behoof of the said George Clymer McCall and William Coleman McCall, children of the said George McCall, deceased, their heirs and assigns for ever, in equal parts, as tenants in common, and not as joint tenants. And the said John Reed and Standish Forde, for themselves, their heirs, executors, and administrators, respectively, do covenant, promise, and agree, to and with the said Archibald McCall party hereto, his heirs and assigns, by these presents, that they, the said John Reed and Standish Forde, and their heirs respectively, all and singular the premises hereby granted, with the respective appurtenances, unto the said Archibald McCall party hereto, his heirs and assigns, to and for the uses aforesaid, against them, the said John Reed and Standish Forde, and their heirs respectively, and against all and every other person or persons whatsoever, lawfully claiming or to claim by, from, or under them, or any or either of them, shall and will warrant and for ever defend by these presents. And it is expressly understood by the parties to these presents, that nothing herein contained shall be deemed, taken, or construed to extend to warrant the title to the aforesaid premises, or any part or parcel thereof, against any person or persons whatsoever, save the said grantors and each of them, and their heirs respectively, and such as shall claim under them or either of them only; and that no recourse whatever shall be had against the said grantors or either of them, or either of their heirs, executors, or administrators, for any defect or want of title to the whole or any part of the said premises, or for any deficiency in quantity or quality, or for any taxes assessed and charged on the said premises since the date of the first above recited article of agreement. Provided always, nevertheless, and it is hereby expressly declared to be understood between the said parties, that all and singular the tracts of land heretofore conveyed or granted, or intended so to be, in and by the several herein before recited deeds or conveyances, viz: by deed from John Reed, and Rachel his wife, and Standish Forde, to Archibald McCall, deceased, Archibald McCall party hereto, George McCall and George Taylor, in fee, dated the third day of June, one thousand seven hundred and ninety-five, recorded in the district court for Monongalia county, May term, one thousand seven hundred and ninety-seven; and by deed from William Tilton to Archibald McCall, deceased, Archibald McCall party hereto, George McCall and George Taylor, in fee, dated the eleventh day of February, one thousand seven hundred and ninety-six, and recorded in the district court for Monongalia county, May term, one thousand seven hundred and ninety-seven, and by deed from Robert Ralston, of the city of Philadelphia, merchant, assignee of William Tilton, to the said Archibald McCall, deceased, Archibald McCall party hereto, George McCall and George Taylor, in fee, dated the fifteenth day of February, one thousand seven hundred and ninety-six, recorded in the district court for Monongalia county, May term, one thousand seven hundred and ninety-seven; and by deed from Standish Forde to Archibald McCall, deceased, Archibald McCall party hereto, George McCall and George Taylor, in fee, dated the twentieth day of January, one thousand seven hundred and ninety-seven; and by deed from John Young to Archibald McCall party hereto, in fee, dated the twenty-fourth day of April, one thousand eight hundred and two, recorded in the district court for Monongalia county, September term, one thousand eight hundred and three, and not mentioned or conveyed among the above described one hundred and five thousand nine hundred and five acres, now and hereby conveyed,

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are to be deemed and considered as the right, estate, inheritance, and property of the said John Reed and Standish Forde, and their heirs, any thing in this deed or in the above recited deeds to the contrary notwithstanding. In witness whereof, the said parties have interchangeably set their hands and seals hereunto. Dated the day and year first above written.

JOHN REED, [SEAL.]
RACHEL REED, [SEAL.]
STANDISH FORDE, [SEAL.]
SARAH FORDE, [SEAL.]

Sealed and delivered in the presence of us,
DEBORAH RICKMAN,
ISABELLA NEWTON,
JANE × BURNELL.

Sealed and delivered by John Reed and Rachel Reed in presence of us,
JAMES SCHER,
JOS. BROGNARD,
WM. CONDON, jun.

(Endorsed.)

City of Philadelphia, ss.—Before me, John Inskeep, Esquire, Mayor of the city of Philadelphia, came the within named John Reed, and Rachel his wife, and Standish Forde, and Sarah his wife, and in due form of law acknowledged the within written indenture to be their and each of their act and deed, and desired the same might be recorded as such: they the said Rachel and Sarah being of full age, and first by me, separately and apart from their respective husbands, severally examined, did declare that they executed the said indenture voluntarily, of their own free will and accord, without any compulsion or undue influence whatever, the contents of the said indenture being first made known to her.

In testimony whereof, I, the said mayor, have hereunto set my hand, and caused the seal of the mayoralty of the said city to be hereto affixed, the third day of April, in the year of our Lord one thousand eight hundred and six.

[SEAL.] JNO. INSKEEP.

VIRGINIA, to wit:

At a general court held at the capitol in Richmond the 11th day of June, 1805, this indenture, together with the certificate from under the hand and seal of John Inskeep, Mayor of the city of Philadelphia, thereon endorsed, on the motion of the said McCall, is ordered to be recorded.

Teste, WILSON ALLEN, *Clk. Court.*

(Copy of the Appeal Bond taken in this cause.)

Know all men by these presents, that we, John Vincent, William McKinley, and Daniel Stringer, are held and firmly bound unto George C. McCall, William C. McCall, Sarah Forde, Eleanor Forde, Standish Forde, Margaret Forde, John Forde, Ann Forde, Mary Forde, Archibald McCall, jun., George McCall, George Taylor, Archibald McCall, Mary Cadwallader, Ann Reed, John G. McCall, Peter McCall, Margaret A. McCall, Samuel McCall, Harriet McCall, Richard McCall, William McCall, Catha-

rine McCall, Robert McCall, Henry McCall, William Hansel, and Eleanor his wife, Benjamin Smith, and Margaret his wife, Robert Ralston, and William Tilton, in the just and full sum of one thousand dollars, current money of the United States of America, for the true payment whereof unto the said George C. McCall and others above written, we bind ourselves, our heirs, administrators, executors, and assigns jointly, firmly, severally, by these presents. Witness our hands and seals, this twentieth day of April, in the year of our Lord one thousand eight hundred and twenty-nine, and fifty-third of American independence.

The condition of the above obligation is such, that whereas Samuel Gould, Robert Young, Daniel Boardman, Roswell Knowlton, Phineas Chidester, Robert Clark, Ezra Brooks, James Clark, Abraham Wells, Daniel Haines, Rice Vincent, William J. Davis, Isaac Bozarth, William Hire, Joseph McKinney, William Clark, Elijah Phillips, Bizar Phillips, James Bartlett, Laurence Hopkins, David Phillips, James Wells, John Vincent, Aaron Gould, sen., Aaron Gould, jun., William Phillips, Ezra Ward, Henry Winemiller, Cyrus Rice, and Oliver House, defendants in a certain action of ejectment, brought against them in the United States court for the western district of Virginia, held at Clarksburg, by Peregrine Pickle, lessee of George C. McCall, and the other obligees in the above obligation, have sued out a writ of error to the Supreme Court of the United States, from a judgment rendered by the said court for the western district of Virginia against them, in favor of the said lessee, at a court for said district, held at Clarksburg on the eleventh day of April, Anno Domini eighteen hundred and twenty-nine; now, if the said plaintiffs in error shall prosecute their writ with effect, and answer all damages and costs, if they fail to make their plea good, then this obligation to be void and of no effect, else to remain in full force and virtue.

JOHN VINCENT, [SEAL.]
D. STRINGER, [SEAL.]
WM. McKINLEY, [SEAL.]

I, Jasper Yeates Doddridge, clerk of the district court of the United States of America for the western district of Virginia, hereby certify that the above is a true copy of the record and proceedings in the above cause, to wit, the lessee of Reed and Forde and others against Daniel Boardman and others, as fully as the same are of record in the same court. Witness my hand and the seal of the said court, at Clarksburg, this ninth day of February, in the year of our Lord one thousand eight hundred and thirty, and in the fifty-fourth year of the independence of the United States of America.

J. Y. DODDRIDGE, *Clk. W. D. Va.*

(Copy of the Writ of Citation issued in this cause, to wit:)

The President of the United States of America to the Marshal of the Western District of Virginia, greeting:

Whereas Samuel Gould, Robert Young, Daniel Boardman, Roswell Knowlton, Warren Knowlton, Phineas Chidester, Robert Clark, Ezra Brooks, James Clark, Abraham Wells, Daniel Haines, Rice Vincent, William J. Davis, Isaac Bozarth, William Hire, Joseph McKinney, William Clark, Elijah Phillips, Bizar Phillips, James Bartlett, Laurence Hopkins, David Phillips, James Wells, John Vincent, Aaron Gould, sen.,

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Aaron Gould, jun., William Phillips, Ezra Ward, Henry Winemiller, Cyrus Rice and Oliver House, have sued out their writ of error to a certain judgment given against them, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and twenty-nine, and in the fifty-third year of the independence of the United States of America, in the district court of the United States of America for the western district of Virginia, in an action of ejectment brought into the said court against them by Peregrine Pickle, the lessee of George C. McCall, and William C. McCall, Sarah Ford, Eleanor Ford, Standish Ford, Margaret Ford, John Ford, Ann Ford, Mary Ford, Archibald McCall, jun., George McCall, George Taylor, Archibald McCall, Mary Cadwallader, Ann Reed, John G. McCall, Peter McCall, Margaret A. McCall, Samuel McCall, Harriet McCall, Richard McCall, William McCall, Catharine McCall, Robert McCall, Henry McCall, William Hansel, and Eleanor his wife, Benjamin Smith, and Margaret his wife, Robert Ralston, and William Tilton, returnable in the Supreme Court of the United States on the second Monday in January next. These are, therefore, to command you, that you make known to the said Peregrine Pickle, George C. McCall, and William C. McCall, Sarah Ford, Eleanor Ford, Standish Ford, Margaret Ford, John Ford, Ann Ford, Mary Ford, Archibald McCall, jun., George McCall, George Taylor, Archibald McCall, Mary Cadwallader, Ann Reed, John G. McCall, Peter McCall, Margaret A. McCall, Samuel McCall, Harriet McCall, Richard McCall, William McCall, Catharine McCall, Robert McCall, Henry McCall, William Hansel, and Eleanor his wife, Benjamin Smith, and Margaret his wife, Robert Ralston, and William Tilton, that they be and appear to the said writ of error in the said Supreme Court on the day of the next term thereof, to hear an assignment of errors. And hereof fail not at your peril. And how you shall have executed this writ of citation make return to our clerk of our district court for the western district of Virginia, at Clarksburg, on the rule day of said district court for the month of next; and have then there this writ.

Witness the honorable Alexander Caldwell, judge of the United States' court for the western district of Virginia, at Clarksburg, this thirteenth day of April, in the year of our Lord one thousand eight hundred and twenty-nine, and in the fifty third year of the independence of the United States of America.

A. CALDWELL,
Judge of the W. D. of Virginia.

Which writ has the following return endorsed thereupon, to wit:

The defendants in this writ of citation are not inhabitants of the western district of Virginia.

J. W. PATTON, *D. M.*
B. Reeder, M.

The following is a copy of a paper, purporting to be instructions to the clerk of the federal court holden at Clarksburg, handed to the said clerk by Archibald McCall, one of the lessors of the plaintiff in the action of ejectment, decided in the said district court, to wit:

The Clerk of the Federal Court holden at Clarksburg.

SIR: You will not include us, the subscribers, as claiming any privilege or benefit by, from, or under the writ of error sued out in the case of the

lessee of Reed and Forde and others against Boardman and others, as we disclaim the said writ of error. You will, therefore, not charge or hold us liable for any costs that have or may accrue in pursuance of the suing out and prosecuting said writ of error. Witness our hands and seals this first day of May, A. D. 1829.

WARREN KNOWLTON,
JAMES BARTLET,
ROSEL KNOWLTON,
EZRA BROOKS,
CYRUS RICE.

Witness present,
ROBERT CLARK.

Witness to the signature of Cyrus Rice,
SAMUEL TOLBERT.

UNITED STATES OF AMERICA, to wit.

The President of the United States of America to the Judge of the District Court of the United States for the Western District of Virginia, greeting,

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between Peregrine Pickle, the lessee of George C. McCall, and William C. McCall, Sarah Ford, Eleanor Ford, Standish Ford, Margaret Ford, John Ford, Ann Ford, Mary Ford, Archibald McCall, jun., George McCall, George Taylor, Archibald McCall, Mary Cadwallader, Ann Reed, John G. McCall, Peter McCall, Margaret A. McCall, Samuel McCall, Harriet McCall, Richard McCall, William McCall, Catharine McCall, Robert McCall, Henry McCall, William Hansell, and Eleanor his wife, Benjamin Smith, and Margaret his wife, Robert Ralston, and William Tilton, plaintiffs, and Samuel Gould, Robert Young, Daniel Boardman, Roswell Knowlton, Warren Knowlton, Phineas Chidester, Robert Clark, Ezra Brooks, James Clark, Abraham Wells, Daniel Haines, Rice Vincent, William J. Davis, Isaac Bozarth, William Hire, Joseph McKinney, William Clark, Elijah Phillips, Bizar Phillips, James Bartlett, Lawrence Hopkins, David Phillips, James Wells, John Vincent, Aaron Gould, sen., Aaron Gould, jun., William Phillips, Ezra Ward, Henry Winemiller, Cyrus Rice, and Oliver House, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws of the United States should be done.

Witness the honorable Alexander Caldwell, judge of the district court of the United States for the western district of Virginia, this thirteenth day of

April, A. D. one thousand eight hundred and twenty-nine, and in the fifty-third year of the independence of the United States of America.

J. Y. DODDRIDGE, *Clk. W. D. Va.*

I, Alexander Caldwell, judge of the western district of Virginia, having taken and approved the bond of John Vincent, Daniel Stringer, and William McKinley, do allow this writ of error.

A. CALDWELL.

April 13*th*, 1829.

I, Jasper Yeates Doddridge, clerk of the district court of the United States for the western district of Virginia, hereby certify that the foregoing is a true copy of the record and proceedings, together with all things concerning the same, as fully as the same are of record in my office, in the case of the lessee of Reed and Forde and others against Daniel Boardman and others. I also certify that I was instructed by the agent of the plaintiffs in error not to make a copy of the record until ordered, and that I was ordered to make a copy of the record to be filed the present term of the Supreme Court, on or about the sixteenth day of November last.

Witness my hand and the seal of the said court for the said district, at Clarksburg, this tenth day of February, in the year of our Lord one thousand eight hundred and thirty, and in the fifty-fourth year of the independence of the United States of America.

J. Y. DODDRIDGE, *Clk. W. D. Va.*